Petition

81-2094

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In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED */

1. Whether the Court of Appeals erred in its conclusion of law which held:

(A) that a motion picture film which was obscene under federal standards was, nonetheless, entitled to copyright protection under federal law, and that the essential (underlying) validity of a copyright issued by the Copyright Office could not be attacked on those grounds; and

(B) that a finding that a motion picture film was obscene as a matter of law under federal standards was not a defense to a copyright infringement lawsuit arising out of a copyright which had been issued to the film by the Copyright Office.

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*/ Petitioners' statement of the issues presented to the Court of Appeals and in Question 1(A) and 1(B) of this Petition differs from the Respondents' statement of the issues on their appeal to the

(This footnote is continued on the next page)

2. Whether the Court of Appeals erred in its conclusion of law which held that the defense of "fair use" asserted by a City Attorney and City Councilmen in a copyright infringement lawsuit brought against them as individuals, was a question of fact for the jury and was not a question of law for the trial judge, where

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Court of Appeal in C.A. #79-3087. Respondents' first issue (See Appellants' Opening Brief at page 2, lines 3-5) reading:

> "Whether the alleged obscenity of subject matter may be asserted as an affirmative defense to a claim of copyright infringement."

assumed the correctness of a fundamental proposition which was placed in issue by the pleadings and is being questioned by Petitioners herein, namely: whether the five "Certificates" which were issued by the Register of Copyrights, and the claims of copyright infringement thereunder are valid and establish a property interest in the plaintiffs. See R.T. 1018, line 8 - 1019, line 4:

> "MR. RHINE: The first major objection on substance is that content is not a defense in any copyright case that I ever heard. And I have said this and we have consistently, all the way through, taken that position, as your Honor knows. So we want that position preserved for appeal purposes."
>
> "THE COURT: Yes."

the use consisted of: (1) photographs and sound recordings of motion picture films taken by an agent of the City Attorney for submission to the City Council at an executive session of a regular meeting of the City Council; (2) use by the City Council members at such executive session in their deliberations as to

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"MR. RHINE: The defendants have taken a contrary position right from the beginning. They say that obscenity per se is not a defense to copyright, but it means the material is not even copyrightable. So they're arguing that the copyright is even invalid, let's say, before you get it."

"THE COURT: It's not even void ab initio, it's void prior to that time."

"MR. RHINE: That's right. So that's the first issue, it seems to me, that has to be preserved for appeal, because I'm sure it's going to get raised that way.

"The second issue, then, is, let's assume that the Court rules that obscenity, while it doesn't initially have anything to do with copyright, could be raised as a defense to a copyright infringement action.

"In that posture we say the burden is on the defense."

See also, Appellee's Brief in C.A. #79-3087 at footnote 1 on page 1, which preserved that distinction on appeal. Massachusetts Mutual Life Inc. Co. v. Ludwing, 426 U.S. 479 at 480, 48 L.Ed.2d 784 at 786, 96 S.Ct. 2158 (June 14, 1976).

whether a public nuisance abatement lawsuit should be brought by the City; and (3) use by the City Attorney in the public nuisance abatement lawsuit which the City Council ordered the City Attorney to file after the City Council had examined the photographs in executive session.

3. Whether the Court of Appeals erred in its public policy statement that "Pragmatism further compels a rejection of an obscenity defense," and whether that public policy statement can be reconciled with the doctrine of stare decisis and the cardinal rule of statutory construction that related statutes and treaties on the same subject or serving the same purpose or object (in pari materia) are to be construed together.

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In the
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JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in Jartech Inc., et al. v. Clancy et al., C.A. No. 79-3087 on Plaintiffs' appeal from the judgment entered

in the trial court on the special verdicts returned by the jury.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported in Jartech, Inc. et al. v. Clancy et al. (January 25, 1982), 666 F.2d 403. A copy of the opinion of the Court of Appeals appears at Appendix A-1 to A-22 to this petition. A copy of the Judgment on the verdict and special jury verdicts appears at Appendix B-1 to B-23. A copy of the trial court's decision and order for findings of fact, conclusions of law and judgment re motion for costs taxable by the Court and Attorneys' Fees, and the Court's findings of fact and conclusions of law appears at Appendix C-1 to C-22.

JURISDICTION

The opinion of the Court of Appeals

was filed on January 25, 1982. On April 12, 1982, Justice Rehnquist signed an order extending the time for filing a petition for writ of certiorari to and including May 10, 1982. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1) and Rules 17.1(a) and 17.1(c) of the U.S. Supreme Court.

STATUTORY PROVISIONS INVOLVED

The text of the following statutes, constitutional provisions, and treaties is set forth at Appendix E-1 to E-30 to this petition: U.S. Constitution, Art. 1, §8, Cl. 8; 17 U.S.C. §1 (July 30, 1947); 17 U.S.C. §5 (July 30, 1947); 17 U.S.C. §11 (July 30, 1947); 17 U.S.C. §101 (July 30, 1947); 17 U.S.C. §116 (July 30, 1947); 17 U.S.C. §209 (July 30, 1947); 17 U.S.C. §102 (1976); 17 U.S.C. §106 (1976); 17 U.S.C. §107 (1976); 17

U.S.C. §410 (1976); 17 U.S.C. §505 (1976); 1911 "Agreement for the Suppression of the Circulation of Obscene Publications," 37 Stat. 1511-1515; Protocol amending the agreement of May 4, 1910, entered into force with respect to the United States of America, August 14, 1950, 1 UST 849; TIAS 2164; 30 UNTS 3.

STATEMENT OF THE CASE

This is one of three petitions seeking review of the separate appeals from the three trial court judgments in this copyright infringement lawsuit. 1/

1/ A more comprehensive statement of facts appears in the petitions for a writ of certiorari as to the separate appeals in C.A. #80-5010 and C.A. #5016, concurrently being filed in this court.

Petitioners request this Court to take judicial notice of the nature of the state controversy, decided by this Court in Edward Cooper, City Attorney of Santa Ana, California v. Mitchell Brothers' Santa Ana Theater, etc., et al., ___ U.S. ___, 70 L.Ed.2d 262, 102 S.Ct. ___ (Nov. 30, 1981). That case is now before the California Supreme Court on the City Attorney's petition for a hearing after a second decision by the Court of Appeal, Fourth District, Division 2, in People ex rel. Cooper v. Mitchell Brothers' Santa Ana Theater, et al., 128 Cal.App.3d 937, 180 Cal.Rptr. 728 (Feb. 18, 1982).

The petition herein asks for the resolution of two basic questions which have never been ruled upon by this Court before; namely, (1) whether motion picture films which are obscene under federal standards are entitled to copyright protection, and (2) whether Santa Ana City officials are to be subjected to a jury trial and potential personal liability in a copyright infringement lawsuit, for copies of motion picture films made in the scope of their official duties and pursuant to their responsibilities under a Santa Ana City ordinance which requires them to initiate legal action to abate obscene motion picture films which are being exhibited in the City.

Until 1979, the weight of authority and prevailing law had always been that obscene works were not eligible for copyright. See Nimmer on Copyright, (1976) § 36 at page 146.29:

§ 36. Limitations on Copyrightability

By Reason of Illegal Content or Use.

> A work may clearly fall within one of the protectible cateories enumerated in the preceding sections of this chapter and nevertheless be denied copyright protection by reason of its illegal content. Though there is no express statutory authority for such exclusion, the courts have long taken the view that obscene works are not eligible for copyright. (Our emphasis.)

See also, 18 C.J.S. 170.

The 1979 decision of the Fifth Circuit (Godbold, Simpson and Morgan) in Mitchell Brothers Film Group v. Cinema Adult Theater, 604 F.2d 852 (Oct. 16, 1979), cert.den. 445 U.S. 917, 63 L.Ed.2d 601, 100 S.Ct. 1277, which overruled the trial court decision of U.S. District Judge Hill in Dallas which had followed the prevailing view, is responsible for the present controversy. The Court of Appeals (9th Cir.) opinion also went against the weight of authority and, in its "tunnel vision" reliance on the Fifth Circuit's opinion, "touted" Nimmer (whose 1976 treatise is cited above by petitioner) but in a different manner - as "bootstrap" sup-

port for the opposite viewpoint to that stated by Nimmer in his 1976 treatise. See Jartech, Inc., et al. v. Clancy, et al., 666 F.2d 403 at page 406:

> "The leading treatise on copyright has called the Fifth Circuit's Mitchell Brothers case 'the most thoughtful and comprehensive analysis of the issue.' Nimmer on Copyright, § 2.17, p. 2-194.2 (1980). Nimmer also considers Mitchell Brothers to represent the prevailing view on this issue."

The importance of this case is manifest. If the opinion of the Ninth Circuit is permitted to stand, the pornographers will proceed to register every hard-core film that they produce. The federal property rights thereby created will have a catastrophic effect on obscenity law enforcement locally, nationally, and internationally, and will provide the pornographers with a new weapon in the form of a civil rights lawsuit attacking any obscenity law enforcement which affects their " copyright interests".

STATEMENT OF FACTS

The original copyright complaint was

filed on October 12, 1976, on behalf of three corporate plaintiffs: Jartech, Inc., Anatuna, Inc., and Cinema 7, Inc., and alleged a copyright interest in three of the films herein involved: "Behind the Green Door" (Jartech, Inc.), "Resurrection of Eve" (Anatuna, Inc.), and "Sodom and Gomorrah" (Cinema 7, Inc.), which the corporate plaintiffs had produced and for which the Register of Copyrights had issued Certificates of Registration of a Claim to Copyright (CT 1-8).

On October 3, 1977, a first amended complaint was filed which added a fourth corporate plaintiff, Mooks, Inc., and alleged a copyright interest on behalf of two of such plaintiffs in two additional films: "Inside Marilyn Chambers" (Cinema 7, Inc.) and "The Autobiography of a Flea" (Mooks, Inc.), which the corporate plaintiffs had produced and for which the Register of Copyrights had issued Certificates of Registration of a Claim to Copyright (CT 388-407).

Plaintiffs' First Amended Complaint sought relief in the nature of actual or statutory damages, punitive damages, recovery of all infringing copies, a permanent injunction against future infringement, and costs including reasonable attorney's fees (CT 394-395).

The five defendants named were: James J. Clancy, an attorney hired by the Santa Ana City Council as special counsel to conduct an investigation solely in connection with the drafting, consideration and adoption of a public nuisance abatement ordinance (CR 140 at Finding of Fact No. 3), and Gordon Bricken, James E. Ward, David L. Brandt and David F. Ortiz who, at all times complained of, were members of the seven member City Council of Santa Ana which hired defendant Clancy (CR 140 at Finding of Fact No. 5). The four members of the City Council who were named as defendants were sued in their individual capacities. (CR 140 at

Finding of Fact No. 14). The City of Santa Ana was not named as a defendant (CR 140 at Finding of Fact No. 15), nor were the three other members of the City Council (CR 140 at Finding of Fact No. 14).

Pursuant to order of Court, the defendants on June 5, 1978 filed a verified amended counterclaim (CR 66; CT 512-537) which: (1) named a sixth film, "C.B. Mamas," as additional subject matter in the Santa Ana controversy, with an allegation that one of the plaintiffs, Mooks, Inc., also claimed a copyright interest in that film, (2) added James Mitchell, Artie Mitchell and Mitchell Brothers' Film Group, a general partnership (James Mitchell and Artie Mitchell each owning a 50% interest) as defendants, with allegations as to the interest of each in the six films, and an allegation that they were the principal and alter ego of the other defendants, and (3) sought additional relief, including a judgment against James Mitchell,

Artie Mitchell and Mitchell Brothers' Film Group, a general partnership, and a declaratory judgment that the copyrights in the six films were invalid, and that each of the films was hard-core pornography and unlawful property and contraband under the laws of the United States.

The case proceeded to trial on the claim and counter-claim before U.S. District Judge Laughlin E. Waters in the United States District Court, Central District of California in November and December of 1978, with a jury being impaneled at the plaintiffs' request.

During plaintiffs' case in chief, certified copies of the six Certificates of Registration of a claim to Copyright were introduced into evidence as plaintiffs' 1-6 (R.T. 646). Videotapes of the six films were shown to the court and jury and received in evidence as defendants A-F during the cross-examination of defendant Clancy

(R.T. 631 line 21 - 633 line 18) (R.T. 1008, lines 12-20). Defendants stipulated they distributed the six films in interstate commerce (R.T. 1204, line 21; 1644, line 8).

Before the plaintiffs completed their case in chief, the defendants informed the Court that they intend to rest their case on plaintiffs' complaint without presenting a defense thereto, on the grounds that the films, which had been placed in evidence during plaintiffs' case in chief, spoke for themselves (R.T. 1008-1025).

Upon the conclusion of the plaintiffs' case in chief on Dec. 12, 1978, the defendants made a motion for a directed verdict based upon the grounds that the six motion picture films were obscene per se and did not present a jury question and, as such, were uncopyrightable (R.T. 1221, line 14 - 1242, line 9). Immediately after the Court denied Defendants' motion for a directed verdict, Defendants rested (R.T. 1332, lines

23 - R.T. 1333, line 15).

Before submitting the case to the jury on December 14, 1978, the Court bifurcated the trial and reserved the issues which were presented in the counter-claim, including the issue as to "C.B. Mamas," for decision by the Court after completion of the jury trial phase. (R.T. 1491, lines 1-23) (C.T. 881).

On December 14, 1978, the issues presented in the First Amended Complaint for Copyright Infringement were submitted to the jury which rendered its special verdict on the same day (C.T. 863-880) that: (1) each of the five motion pictures was obscene, (2) each defendant was intentionally responsible for the copying of each motion picture, (3) none of the defendants realized any profit from the copying, (4) the use made by the defendants of the copies was a fair use, and (5) the individual defendants did not infringe the copyrights of the five motion

pictures (C.R. 140 at Finding of Fact No. 6). Thereafter, on December 21, 1978, judgment was entered on the jury verdicts. (C.T. 882).

On Mar. 22, 1979, the Court filed its "Decision and Order for Findings of Fact, Conclusions of Law and Judgment Re Motion for Costs Taxable By the Court and Attorney's Fees" (CR 119).

On October 31, 1979, the Court filed its findings of fact and conclusions of law and judgment for the defendants on their motion for costs and attorneys' fees (CR 140).

On November 19, 1979, the Court filed its findings of fact and conclusions of law and judgment in favor of the counter-defendants on the counterclaim (CR 145, 146).

In their appeal, from the judgment entered on the special verdicts, plaintiffs asked that the judgment on the jury verdicts be reversed and that judgment be entered in their favor, that the case be remanded with

directions to determine the amount of actual or statutory damages suffered by them and that the defendants be required to deliver up all infringing copies and other devices for making such infringing copies.

The Defendants asked that the judgment for the defendants be affirmed, but for a different reason; namely, that plaintiffs' motion for a directed verdict should have been granted, Massachusetts Mutual Life Ins. Co. v. Ludwig, 426 U.S. 479 at 480, 48 L.Ed. 2d 784 at 786, 96 S.Ct. 2158 (June 14, 1976), because plaintiffs' evidence on copyright ownership which was offered during their case-in-chief, in the form of certified copies of the "Certificate of Registration of a claim of Copyright" in the five motion pictures, failed to prove ownership of a valid "Claim" and that the five motion pictures, which were identified in such "Certificates" and viewed by the Court during plaintiffs' case-in-chief were obscene per se and estab-

lished that such "Certificates were issued in error and the "Claims" to be invalid as a matter of law.

In its opinion, on the Plaintiffs' appeal from the judgment entered on the special verdicts, the Court of Appeals held that the City officials could not assert obscenity as a defense to the copyright infringement lawsuit; that the defense of "fair use" presented a jury question, and that, while obscenity was not a defense, the jury's verdict on "fair use" was not clearly erroneous.

The Court of Appeals affirmed the trial court's decision that the Council Members were not liable for copyright infringement.

The Court of Appeals reversed the judgment which awarded attorney's fees to the defendants and affirmed the judgment which dismissed the counterclaim.

SUMMARY OF ARGUMENT

1. Belcher v. Tarbox, is inapposite. The defense of "fraudulent content" is not analogous to the defense of "obscene content". The former defense places in issue facts which are extraneous to the work itself; the latter defense involves facts which are "intrinsic" to the work.

The power of Congress over copyrights is limited by the phrase: "To promote the Progress of Science and Useful Arts", see Lee v. Runge, 404 U.S. 887, applying that rule to patents. By definition, obscene material has no social value and cannot satisfy the constitutional requirement.

The weight of authority holds that obscene material may not be copyrighted. Mitchell Brothers Film Group v. Cinema Adult Theater, (5th Cir., 1979) is patently in conflict with ruling copyright case law and 19 U.S.C. §1305(a). See U.S. V. 37 Photographs, 402 U.S. 363, which holds that mate-

rial which is obscene under federal standards is contraband.

Congress has established a comprehensive set of controls over obscenity, which require "restraint" not "sponsorship".

By the 1910 treaty, presently in force, the U.S. is required to "suppress" obscenity. The grant of copyrights herein violates that treaty.

Congress has pre-empted the area of copyright protection. It necessarily follows that any copyright issue involving obscenity would require the federal test.

In Smith v. U.S., 431 U.S. 291, this Court ruled that federal laws involving obscenity are not affected by state policy.

Rules of statutory construction (in pari materia) require that the standard for obscenity employed in other federal statutes also be applied to copyright law.

The legal issue of "obscenity" in copyright cases is the same as the legal issue

of "obscenity" in civil forfeiture cases under 19 U.S.C. §1305(a). Having established certain property rights under the "Copyrights" it validated, the Court of Appeals' decision has created a dilemma.

The issuance of a certificate of "Registration of a Claim to Copyright" is a ministerial function. As a matter of policy the Copyright Office, in issuing Certificates, will not consider the obscenity issue; that issue is for the federal courts to decide.

The five films are "obscene per se" - as a matter of law - "reasonable men could not differ and could come to but one conclusion". No jury issue is presented.

In deciding the "obscenity per se" issue, this Court must take judicial notice of: (1) the ethical values of the 50 states, (2) the natural abhorrence to public displays of explicit sexual conduct, (3) the statutes of the 50 states relating to sexual

morality, and (4) the fact that there is no difference between lewd conduct in public (3 dimension) and lewd conduct performed before a motion picture camera for commercial exhibition to the public (2 dimension).

2. The most conspicious error is the Ninth Circuit's conclusion that individual city councilmen may be personally liable in a copyright infringement lawsuit jury trial, even though the subject matter is obscene, and even though the copies were made in the course of their duties to abate such obscene films. Petitioners contend that "fair use" was established as a matter of law and a verdict should have been directed.

3. The refusal of the Ninth Circuit to follow stare decisis and respond to legal argument on the issue of statutory construction (in pari materia) is a sufficient abuse of appellate procedure to warrant an exercise of this Court's power of supervision under Rule 17.1(a).

REASONS FOR GRANTING THE WRIT

I

THE NINTH CIRCUIT ERRED IN ITS CONCLUSIONS OF LAW THAT A MOTION PICTURE FILM WHICH WAS OBSCENE PER SE UNDER FEDERAL STANDARDS WAS, NEVERTHELESS, ENTITLED TO COPYRIGHT PROTECTION UNDER FEDERAL LAW, AND THAT OBSCENITY WAS NOT A DEFENSE TO A COPYRIGHT INFRINGEMENT LAWSUIT.

The Ninth Circuit's reliance upon the copyrightability of fraudulent materials in Belcher v. Tarbox, 486 F.2d 1087 (9th Cir. 1973) for the proposition that motion picture films which are obscene under federal law are, similarly, entitled to copyright protection, is misplaced. Unlike the problems which are created in the former situation by facts which are extraneous to the work itself, the "constitutional goal of encouraging creativity" is not discouraged by requiring in the latter situation that an author, like everyone else, must concern himself with the judgment of federal courts of law that his work must

not be "intrinsically" obscene (per se) under objective federal standards. Compare, Mitchell Brothers Film Group v. Cinema Adult Theater, 604 F.2d 852 (5th Cir. 1979) at page 856. The distinction between "obscene content" and "fraudulent content" is drawn by Nimmer in his treatise "The Law of Copyright" (1976) § 36 "Limitations on Copyrightability By Reason of Illegal Content or Use" at page 146.30:

> "Since an allegation of fraudulent content necessarily puts in issue facts extraneous to the work itself it seems proper to regard such facts as insufficient to constitute a defense in a copyright infringement action. . ." (Our emphasis)

An author can be required to make certain that his content is not intrinsically obscene under objective federal standards (obscene per se). See Point I(B)3, infra, at page 54 : "The 5 Films Which Were Personally Viewed By, and Presented To The

Trial Court in Analytical Form Through 'Continuity' and 'Time and Motion Study' Evidence, Are Obscene Per Se". See also Appendix D-1 through D-185.

(A) THE UNITED STATES CONGRESS HAS NOT AND CANNOT GRANT COPYRIGHT PROTECTION TO A MOTION PICTURE WHICH IS OBSCENE UNDER FEDERAL STANDARDS, AND IN SUCH CASES, WHERE A CERTIFICATE OF REGISTRATION HAS BEEN ISSUED, THE CERTIFICATE IS INVALID.

(1) Introduction; The Nature And Extent Of The Copyright Power.

Article 1, section 8, clause 8 of the U.S. Constitution specifically grants to Congress the power "to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Congress has exercised that power and regularly grants copyright protection to motion picture films which comply with the federal standards, 17 U.S.C., section

102(a)(6). Since Congress has chosen to exercise the copyright power in a particular area, that area is pre-empted by federal law. Goldstein v. California, 412 U.S. 546, 562, 37 L.Ed.2d 163, 177, 93 S.Ct. 2303 (June 18, 1973).

In exercising its responsibilities under the copyright power, Congress has seen fit to place exclusive jurisdiction in the federal district courts. 28 U.S.C., section 1338(a). The purpose of such exclusive jurisdiction in copyright cases is to assure uniformity and avoid piece-meal litigation. Maternally Yours Inc. v. Your Maternity Shop, Inc., (1956, CA2d, N.Y.) 234 F.2 538. The clerks of the courts of the United States under 17 U.S.C., section 508 are now required to send written notification of the filing and final orders in actions filed under Title 17.

(2) Federal Law Precludes The Granting Of Copyright Protection To A Motion Picture Which Is Obscene Under Federal Standards.

(2)(a) The Phrase: "To Promote The Progress Of Science And Useful Arts" Found In Article I, Sec. 8, Cl. 8 Of The U.S. Constitution, Acts As A Limit On The Scope Of Congress' Enumerated Power To Grant Monopolies Through Copyrights.

The Constitutional power over copyrights is found in Article I, sec. 8, cl. 8 of the U.S. Constitution. It has been held that this introductory clause ("To promote the Progress of Science and Useful Arts,") acts as a limit on Congress' power to grant monopolies through patents, Graham v. John Deere Co., 383 U.S. 1, 5-6, 15 L.Ed.2d 545, 549, 550, 86 S.Ct. 684, and by logical implication, acts as a limit on Congress' power to grant monopolies through copyrights, a right found in the same Article, section and clause. See Lee v. Runge, 404 U.S. 887, 30 L.Ed.2d 169, 92 S.Ct. 197 (1971) (dissenting opinion by Justice Douglas). Justice Douglas,

in reviewing the question of "standard of copyrightability", stated at 171:

> "Patents which did not serve the broad goals of furthering scientific advancement and bettering the lot of mankind (Great Atlantic & Pacific Tea Co. v. Supermarket, 340 U.S. 147, 154-155, 95 L.Ed. 162, 168, 169, 71 S.Ct. 127, concurring opinion) have been held invalid because they lacked utility, did no more than combine existing inventions, were obvious to someone schooled in the art, or sought to monopolize ideas within the public domain. Graham v. John Deere Co., supra; Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp., supra; Hotchkiss v. Greenwood, 11 How. 248, 13 L.Ed. 683. . . . To creat a monopoly under the copyright power which would not be available under the patent power would be to betray the common birthright of all men at the altar of hollow formalisms."

(2)(b) Since, By Definition, An Obscene Motion Picture Does Not Promote The Progress Of Science And Useful Arts, Congress' Power Over Copyrights Cannot Be Construed To Include The Power To Grant Monopolies Over Such Materials.

As with patents, copyright validity requires reference to the standard written into the Constitution: that is, the material must "promote the Progress of

Science and Useful Arts." Congress is without power to authorize the issuance of copyrights which are in derogation of this constitutional standard.

Implicit in the history of Constitutional law is the principle that obscenity, by definition, cannot promote the progress of science and useful arts, because it has been found to be inherently without social value. See Miller v. California, 413 U.S. 15, 20-21, 37 L.Ed.2d 419, 93 S.Ct. 2607. In view of this basic principle, first enunciated in Roth, supra, and recently reaffirmed in Miller, supra, [2/] it is ludicrous to urge that under the copyright powers the federal authority has the power to grant a

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2/ For further recognition of the federal government's refusal to grant property rights in subject matter which is immoral, see 15 U.S.C. § 1052(a) (the Lanham Act), which reads: "No trade-mark... shall be refused registration...on account of its nature unless it consists of or comprises immoral, ...matter..." (Our emphasis.)

property interest (monopoly) in obscene material, which must be recognized by the Courts of every state in the Union.

Congress is without the power to grant a monopoly over obscene material, for by definition, obscenity does not serve the goals of furthering the advancement and bettering the lot of mankind. Obscenity is the worthless explication of an idea. Copyright protection cannot extend to worthless expressions. This concept of the non-copyrightability of obscene words has long been recognized by the judiciary.

The weight of legal authority states that indecent or immoral works are not copyrightable because such works do not promote the "Progress of Science and the Useful Arts." See Martinetti v. Maguire, 16 F.Cas. 920 (No. 9173) (C.C.Cal. 1867), Barnes v. Minen, 122, F. 480 (C.C.S.N.Y.

1903); Bullard v. Esper, 72 F.Supp. 548 (N.D.Tex. 1947); Kahn v. Leo Feist, Inc., 70 F.Supp. 450 (S.D.N.Y. 1947); Broder v. Zeno Mauvis Music Co., 88 F. 74 (C.C. N.D. Cal. 1898); Simonton v. Gordon, 12 F.2d 116 (S.D.N.Y. 1925); Cain v. Universal Pictures Co., Inc., 47 F.Supp. 1013 (S.D. Cal. 1942). Also, writers on the subject agree that obscene or immoral matters are not the subject of copyright protection. I. Nimmer, Copyright (1972), § 36 at 146.28; Rogers, Copyright and Morals, 18 Mich. L. Rev. 390 (1920); Comment, Immorality, Obscenity and the Law of Copyright, 6 S.Dak. L. Rev. 109 (1961); Copyright Protection for Motion Pictures: Limited or Perpetual, American Society of Composers, Authors and Publishers, 1970 Copyright Law Symposium # 18, p. 174. The rationale of the decisions has generally been that a court

of equity will not lend its support to one with unclean hands and for purposes that are contrary to the public interest. Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488, 494 (1942).

The recent decision of the Fifth Circuit Court of Appeals in Mitchell Brothers Film Group, et al. v. Cinema Adult Theater, 604 F.2d 852 (October 16, 1979), which was relied upon by the Ninth Circuit is patently in error and should be overruled: (1) It represents a clear departure from prior case law and is based upon a judicial philosophy which has no precedent; (2) It is patently in conflict with an Act of Congress which declares obscene matter to be contraband, 19 U.S.C. section 1305(a); U.S. v. 37 Photographs, 402 U.S. 363 at 376; and (3) The appeal herein, which involves a controversy over moral public nuisances and

law enforcement methodology, introduces value judgments which were not present in that appeal -- which involved a "film piracy" battle between two pornographers.

The opinion of the Court of Appeals in the Cinema Adult Theater case, Fifth Circuit, (Godbold, Simpson, Morgan) expressed a newly announced judicial philosophy which cannot be traced to any expressions in the prior precedents. See here, the court's opinion at page 861, that: "Two of these doctrines (Judicially created defenses to infringement actions involving immoral or obscene works) are largely vestige of a bygone era and need to be addressed only briefly" (our emphasis); that the "theory that judges should act as conservators of the public morality" should be rejected, and "that it is inappropriate for a court, in the absence of some guidance or

authorization from the legislature, to interpose its moral views between an author and his willing audience". Compare, in this regard, the Statement of Facts herein at pages 7-16 and the language of the U.S. Supreme Court in James Phalen v. Commonwealth of Virginia, 12 L.Ed. 1030, 1033 (1850):

> "The suppression of nuisances injurious to public health or morality is among the most important duties of government . . . It is a principle of the common law, that the king cannot sanction a nuisance."

See, also, the contrary expression voiced in Rex v. Curl, 2 Strange 789 (1727); Sir Charles Sedley's Case, 1 Sid 168 that "the Courts are the guardians of the public morals". Further, the 5th Circuit Court of Appeals' opinion at page 861, reading:

> "A second judicially - created doctrine, the theory that a person can have no property in obscene works, merely expresses by means of a legal fiction the underlying judicial moral conclusion that the work is not worthy of protection.

> The doctrine has not been adopted in this country, see Schneider, supra note 3, at 696-97, and should not be." (Our emphasis.)

is patently erroneous and flies in the face of the specific expression of Congress that obscenity has been declared to be contraband and this Court's recent affirmance of that principal of law in U.S. v. 37 Photographs, supra, at page 376, reading:

> "As we held in Roth v. U.S., 354 U.S. 476, 1 L.Ed.2d 1498, 77 S.Ct. 1304 (1957), and reiterated today in Reidel, supra, obscenity is not within the scope of First Amendment protection. Hence Congress may declare it contraband and prohibit its importation, as it has elected in section 1305(a) to do." (Our emphasis.)

(2)(c) The Court Of Appeals' Conclusion That Congress Intended That A Copyright Monopoly Should Be Granted To The Creators Of Obscenity Flies In The Face Of Other Congressional Action And Other Enactments Whose Purpose Was To Restrain Obscenity.

In Congress assembled, the representatives of the several states have established a comprehensive set of federal

controls on obscenity over (1) importations from abroad, (2) use of the mails, and (3) transportation in interstate commerce. See 18 U.S.C., sections 1461-1465, 1735, 1737; 19 U.S.C., section 1305. This comprehensive set of federal controls represents a national judgment that obscenity should be "restrained", rather than "sponsored" as is the result obtained in the Court of Appeals' holding. See Roth v. U.S., 354 U.S. 476 at 484-485.

While Congress has never established a federal definition of obscenity, it has not been silent about whether or not such materials should be proscribed. The Congressional finding of fact and declaration of policy in that body's Act of October 3, 1967, Public Law 90-100 81 Stat. 253 (creating the Commission on Obscenity and Pornography) holds that the traffic in

obscenity and pornography is a matter of national concern. See Congressional Record for October 13, 1970 at pp. 36474-36478, reporting that Senate Resolution No. 477 overwhelmingly rejected the findings and recommendations of the Commission which recommended the liberation of obscenity.

(2) (d) The 1910 Treaty Which The United States Entered Into With Other Nations Precludes Congress From Enacting A Copyright Statute Which Would Grant Copyright Protection To Obscene Materials. That Treaty Also Requires The Federal Courts To Interpret The Copyright Statute In The Same Manner.

In Roth v. U.S., 354 U.S. 476 at 484 (June 21, 1957) the U.S. Supreme Court took notice of an existing international policy agreement:

> "But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations."

A copy of the 1910 "Agreement for the Suppression of the Circulation of Obscene Publications", 37 Stat. 1511-1515, TS 559, 1

Bevans 748, referred to by the Roth Court appears herein at Appendix E- 28 In that treaty, the United States of America, as a signatory nation, expressed the national desire to repress "offenses connected with obscene publications", . . . "and also to insure or expedite their seizure" and entered into a mutual compact with other nations to that end.3/

By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land. Where treaties and statutes are involved "the courts will endeavor to construe them so as to give effect to both." See Whitney v. Robertson, 124 U.S. 190 (1888).

3/ As of January 1, 1979, 95 nations are parties to the agreement for the Repression of the Circulation of Obscene Publications of 1910. See "Treaties In Force", A List of Treaties And Other International Agreements of the United States in Force on January 1, 1979, page 319, Compiled by the Treaty Affairs Staff, Office of the Legal Advisor, U.S. Department of State.

(3) The Determination Of Obscenity In A Copyright Action Is A Matter Of Federal Law.

(3)(a) Federal Preemption Mandates The Use Of Federal Standards To Determine Obscenity In Copyright Cases.

As noted above, the comprehensive set of federal controls have been supplemented by treaty abroad. In a situation such as this, where the evidence clearly points to a total restraint on obscenity (hard-core pornography), the federal compact must prevail and a degree of preemption is clearly operative.

Moreover, since Congress has preempted the area of copyright protection, (See Point 1(A)(1) above at page 23), the test for determining obscenity in a copyright action involving a motion picture presents a federal question and is wholly a matter of federal law.

Although this Court has suggested that a state need not criminalize dealing in obscenity, see Paris Adult Theater I v. Slaton, 413 U.S. 49, 37 L.Ed.2d 446, 93 S.Ct. 2628 (June 2, 1973), it has not indicated,

with regard to other competing interests that it is willing to recognize that a state may "legalize" such traffic or that the regulation of obscene matter is wholely a matter of state interest. Any suggestion that this Court has rejected the need for ultimate national uniformity, in carrying out its stated federal public policy against hard-core pornography and the above-described federal laws, would not place that Court's remarks in their proper context. See Smith v. U.S., 431 U.S. 291, 307, 52 L.Ed.2d 324, 339, 97 S.Ct. 1756 (May 23, 1977) where this court held at page 339:

> "In this case, petitioner argues that the Court has recognized the right of States to adopt a laissez-faire attitude toward regulation of pornography, and that a holding that §1461 permits a federal prosecution will render the States' right meaningless. See Paris Adult Theater I v. Slaton, 413 U.S. 49, 64, 37 L.Ed.2d 446, 93 S.Ct. 2628 (1973); United States v. Reidel, 402 U.S., at 357, 28 L.Ed.2d 813, 91 S.Ct. 1410. Just as the individual's right to possess obscene material in the privacy of his home, however, did not create a correlative right to receive, transport, or distribute the ma-

terial, the State's right to abolish all regulation of obscene material does not create a correlative right to force the Federal Government to allow the mails or the channels of interstate or foreign commerce to be used for the purpose of sending obscene material into the permissive State."

(3) (b) The Federal Standard Announced In Miller v. California Is Applicable In Copyright Cases.

While Congress has never established a federal definition of obscenity, it has not, as noted above, been silent about whether or not hard-core pornography should be proscribed. Cf. Justice Harlan's discussion of the category of obscenity, "hard-core pornography", and federal power in relation thereto, cited with approval in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 431, 93 S.Ct. 2607.

If the federal laws on importation and copyright, etc., are to function in a logical manner, uniform standards of judicial review should proscribe at the national level the bottom of the barrell (Harlan's view) as described in the Miller formulation and

incorporated into 18 U.S.C., Section 1461 by Hamling v. U.S. In its recent clarification in Hamling v. U.S., 418 U.S. 86, 41 L.Ed.2d 590, 94 S.Ct. 2887 (June 24, 1974), this Court delineated at page 618 what Congress has proscribed by federal law in civil forfeiture actions, 19 U.S.C., Section 1305(a) and in the companion obscenity provisions, 18 U.S.C., Section 1461 and 18 U.S.C., Section 1462. In Smith v. U.S., 431 U.S. 291, at 299, 52 L.Ed.2d 324, 334, 97 S.Ct. 1756, this Court reiterated the Miller Standards as the Constitutional test for determining obscenity, applicable in federal actions.

Basic rules of statutory construction require the conclusion that the same standard is to be applied in administering the federal copyright laws 17 U.S.C., Section 101 et seq. See Sutherland Statutory Construction, Vol. 2A,

Section 51.03 "Statutes deemed to be in pari materia," and Justice Yankwitz speaking in Cain v. Universal Pictures Co., 47 F.Supp. 1013 at 1018 (December 14, 1942).

(3)(c) To Deny Copyrightability On Obscenity Grounds Requires That The Subject Matter Be Obscene As To Each Of The 50 States, (i.e., As A Matter Of Law).

The legal issue regarding obscenity which is presented to a federal court in a copyright case is the same issue which is raised in a civil forfeiture action in the federal courts under 19 U.S.C., Section 1305(a), which seeks to prevent the importation of obscene matter into the United States. In both cases the proscription, one the denial of a claim to a copyrighted property interest, and the other the denial of entry into the county, is predicated upon federal public policy.

The Court of Appeals' decision has

created a dilemma. If the copyright claimants, Jartech, Inc.; Anatuna, Inc.; Cinema 7, Inc.; and Mooks, Inc.; have a copyright interest (property interest) in the five named films in the State of California, under a Ninth Circuit ruling, then all of those property interests which are set forth in the copyright statutes (see Appendix E-1 to E-7) must be recognized by all of the federal circuits and all of the state jurisdictions in the 49 other states, and the films, therefore, must be held to be not obscene in those jurisdictions, also. Conversely, if the claimants do not have a copyright interest because the films are obscene in the Ninth Circuit under federal copyright standards, they are also obscene in the federal sense and are not the subject of a property interest in each of the other federal circuits and in each of the 50 states.

(4) The Issuance Of A Certification Of Registration By The Copyright Office Is An Administrative Function And Creates No New Rights Not Theretofore Enjoyed Under The Copyright Statute. Where A Certificate Of Registration Is Shown To Have Been Issued In Error, It Is The Duty Of The Court To Declare The Certificate Is Invalid.

Copyright is purely a statutory right. Registration of a claim to copyright may be refused by the copyright office where the deposited material has been determined to constitute uncopyrightable subject matter (See Section 410 of the 1976 Act, 17 U.S.C. § 410). However, registration by the copyright office is primarily in the nature of a ministerial function which, in and of itself, can grant no greater rights than those granted under the Constitution and the statute. Registration cannot create a copyright in uncopyrightable (e.g. obscene) material.

Although the Register of Copyrights is authorized to make a determination that deposited material is obscene and

therefore uncopyrightable, he is not required to do so. See, 41 Opinions of the Atty. Gen. No. 73 (1958), 121 USPQ 329 (1959), wherein the Attorney General observed that the Register of Copyrights is "free to decide not to attempt to refuse or deny registration of claims to copyright in works of the nature here discussed", and that the courts may subsequently refuse to recognize the validity of the claim to copyright. In this regard, the Register of Copyrights has publicly declared that the Copyright Office will not refuse registration on obscenity grounds. See the Law of Copyright, Nimmer (1972) § 95.1 at page 358.

(B) THE TRIAL COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR A DIRECTED VERDICT. THE FIVE MOTION PICTURE FILMS ARE HARD-CORE PORNOGRAPHY, AND, UNDER ANY STANDARD, ARE OBSCENE AS A MATTER OF LAW. THERE BEING NO GENUINE ISSUE OF FACT AS TO WHICH REASONABLE MINDS WOULD DIFFER REGARDING THE OBSCENITY OF THE FILMS, THE ISSUE IS SOLELY FOR THE DETERMINATION BY THE COURT.

The factual situation herein, is that

which is hypothecated in the opinion of the Ninth Circuit Court of Appeals, sitting en banc in U.S. v. Cutting and Still, 538 F.2d 835 at page 840, footnote 4. Had the jury returned a finding of non-obscenity, the trial Court would have been required to reverse that verdict as contrary to the weight of evidence and to rule the films obscene as a matter of law. See, generally, 67 C.J.S. § 28, Questions of Law and Fact, at pages 100-103. The determination of the obscenity vel non of the films is strictly a question for the Court. No jury question was presented on the issue of obscenity, for reasonable minds could not differ as to the conclusion that the films involved are obscene per se.

Petitioners contend that the crucial issue before this Court is its preliminary determination as to whether the subject

matter is (1) obscene as a matter of law, or (2) a question of fact for the jury, or (3) constitutionally protected as a matter of law. In the past, this urging that the question is a "mixed question of law and fact" has usually come from the defendants in an obscenity contest in the course of their arguments that the subject matter should not go to the jury, and that in the event that it did, the adverse determination should be reversed as a matter of law. See, for example, Zeitlin v. Arnebergh, 31 Cal.Rptr. 800, 383 P.2d 152. With the advent of hard-core materials, see Appendix D-1 to D-185 to this petition, the opposite side of the coin is now before this Court. See U.S. v. Cutting and Still, supra. Compare U.S. v. Obscene Magazines, 541 F.2d 810 (August 9, 1976).

(B) (1) A Motion For A Directed Verdict In A Civil Case, On The Ground That "Obscenity" Has Been Established As A "Matter Of Law", Imposes On The Court The Duty To Apply "Judicial Notice" To The Subject Matter Which Is Before The Court. Courts Are Presumed To Know What Everyone Knows.

Where "obscenity per se" does exist, it is not necessary to take further evidence on that issue, inasmuch as the Court can and must take judicial notice of the fact that such finding is incontrovertible. Mitchum v. State of Florida, 251 So.2d 298 (August 13, 1971). In Morris v. U.S., 257 A.2d 341 (Dec. 2, 1969), the Court voiced the following test for material which was "obscene per se", i.e., obscene as a matter of law:

> "It is clear to this court that where obscenity per se is involved, the prosecution is not required to offer any evidence beyond the material or performance itself that it is pornographic or obscene or that it is below the national community standards. Womack, supra; Hudson, supra. In other words, if reasonable men could not differ and they could come to but one conclusion, i.e., that the material or performance is sexually morbid, grossly

> perverse, and bizarre, without any artistic or scientific purpose or justification, then the Government on its case-in-chief need not offer any evidence of national community standards." (Our emphasis).

See also Wilhoit v. U.S., 279 A.2d 505, cert.den. 30 L.Ed.2d 546 (Dec. 14, 1971) (Douglas would grant cert. and set the case for argument); Mitchum v. State of Florida, 251 S.2d 298 at 301 (Aug. 12, 1971); U.S. v. Womack, 111 U.S. App. D.C. 8, 294 F.2d 204, cert.den. 365 U.S. 859, 81 S.Ct. 826, 5 L.Ed.2d 822, (March 27, 1969); U.S. v. Wild, 422 F.2d 34 (Oct. 29, 1969), cert.den. 402 U.S. 986, 91 S.Ct. 1644, 29 L.Ed.2d 152, rehrg.den. 403 U.S. 940, 91 S.Ct. 2242, 29 L.Ed.2d 720 (June 21, 1971). The conduct at issue can be so extreme that the subject matter is "per se" contrary to public morals. Boreta Enterprises, Inc. v. Dept. of Alcohol Beverage, 2 Cal. 385, 84 Cal.Rptr. 113 at 123 (Feb. 26, 1970).

The recent decisions of the majority of this Court in Paris Adult Theater, Inc. v. Slaton, 413 U.S. 49, 37 L.Ed.2d 446, at 456, 93 S.Ct. 2628, and Kaplan v. California, 413 U.S. 115, 37 L.Ed.2d 492 at 498, 93 S.Ct. 2680, have placed the validity of the concept of "obscenity per se" beyond peradventure.

(B) (2) This Court Can And Must Take Judicial Notice Of The Fact That The Performance Of Patently Offensive Representations Of Ultimate Sexual Acts, Normal Or Perverted, Actual Or Simulated, Or Of Masturbation Or Lewd Exhibition Of The Genitals In Public, Whether Real Or Simulated, Live, Or As A Part Of A Motion Picture Film Is Against The Public Policy Of 50 States.

This Court can and must take judicial notice of the well-established and shared ethical values and the natural abhorrence of civilized government to public displays of explicit sexual conduct. One just does not fornicate in public, be it actual or simulated - - nor may he on the public screen, and the Santa Ana City Council had the right and duty to stop a business

engaged in that tortious conduct (See Judge Burke's opinion, infra.). The relevant historical facts encompass the ethical values in the 50 States, as reflected in the well-knit pattern of city and state laws relating to public sexual conduct (such as laws dealing with nudity, fornication, prostitution, indecent exposure, sodomy, solicitation of unnatural sex act, etc.). Those values exist for the benefit of the family unit which is at the very core of government in our culture, and deserves this Court's strong support.

Petitioners contend that it is the prerogative of this Court to take judicial notice of all statutes of the States in this Union relating to sexual morality and apply them in pari materia in determining the issue of obscenity in this case. City of Youngstown v. De Loreto,

251 N.E.2d 491 (September 10, 1969); Ohio ex rel. Ewing v. "Without A Stitch", 276 N.E.2d 655 at 659 (July 9, 1971) and Ohio ex rel. Keating v. "Vixen", 272 N.E.2d 137 at 141 (July 21, 1971). The vast history of the Common Law and the statutes of the 50 States make clear those particular areas of public conduct which are contrary to the community notions of right and wrong, and so consistently maintained as illegal and contrary to public policy, that their display and exhibition to the public, either live or recorded, is UNLAWFUL AS A MATTER OF LAW.

This Court must also take judicial notice of the fact that there is little difference between lewd conduct in public areas and lewd conduct performed before a motion picture camera for commercial exhibition to the public. See the analysis of Judge Burke, speaking for the majority of the New York Court of Appeals,

in Trans-Lux Dist. Corp. v. Bd. of Regents, 248 NYS 2d 857 (March 26, 1964), and his concluding principle at page 863:

> "To all argument predicated on artistic merit as decisive of the constitutional question, it is sufficient answer to say that artists are not such favorites of the law that they may ply their craft in the teeth of a declared over-riding public policy against pornographic displays. Since no other profession is privileged to bend public morals, policy and law to its internal craft standards, then neither should producers of films."

The same principle was voiced by the Georgia Supreme Court in its decision in Evans Theater Corp. et al. v. Slaton, 180 S.E.2d 712 (March 4, 1971). The California Supreme Court also has expressly approved Evans Theater Corp. et al. v. Slaton, supra and therein has noted this Court's approval of that basic principle in Paris Adult Theater Inc., v. Slaton, 413 U.S. 49. See People ex rel. Busch v. Projection Room Theater, 17 Cal.3d 42, 130 Cal.Rptr. 328 (June 1, 1976) at page

335:

"Each of the above cases either expressly or implicitly recognizes that the exhibition of obscene magazines or films constitutes a public nuisance properly subject to abatement. For example, the Georgia Supreme Court in Evans upheld application of a general public nuisance statute to an allegedly obscene film, 'I am Curious (Yellow)'. The court explained that '(i)f any semblance of civilization is retained in our country, the States must have standards of conduct permissible in public. There is little difference in the effect on the public between lewd conduct in public areas and lewd conduct explicitly performed on a motion picture screen for the viewing of the public. . . . The exhibition of an obscene motion picture is a crime involving the welfare of the public at large, since it is contrary to the standards of decency and propriety of the community as a whole. The welfare of the whole community is served by restraining the showing of such an obscene film'. (180 S.E.2d at pp. 715-716).

"Evans was cited and discussed with approval in Paris, supra, 413 U.S. 49, 54-55, wherein the court expressly approved use of public nuisance actions to enjoin the exhibition of obscene materials. Since this portion of Paris is critical to our analysis, we quote it in its entirety: . . ." (Our emphasis.)

(B) (3) The 5 Films Which Were Personally Viewed By, And Presented To The Trial Court In Analytical Form Through "Continuity" and "Time and Motion Study" Evidence, Are Obscene Per Se. (See also, Appendix D).

The term "obscene as a matter of law" is an entirety logical conclusion which naturally follows from ruling case law throughout the United States. The sexual conduct which is depicted in the 5 motion picture films which the Mitchell Brothers produced, photographed and directed is the identical type of conduct that was proscribed as felonious in People v. Fixler, 56 Cal.App.3d 321, 128 Cal.Rptr. 363 at 365 (March 17, 1976):

> " It seems self-evident that if A pays B to engage in sexual intercourse with C, then B is engaging in prostitution and that situation is not changed by the fact that A may stand by to observe the act or photograph it. A criminal act is not made any the less criminal by pictorial recordation of the act. (See People v. Zeihm, 40 Cal.App.3d 1085, 115 Cal.Rptr. 528)" (Our emphasis)

Fixler is not an aberration in California

law. See People v. Parker, 109 Cal.Rptr. 354 (August 6, 1973) at page 358:

> ". . . The conduct referred to is that pertaining to the hiring and directing of professional performers to engage in acts of oral copulation in a semi-public place recorded by the camera for distribution to the general public through the media of the cinema. It is a reasonable inference that all involved including respondent expected to reap a financial return from the enterprise. The conduct of defendant may be defined as a form of commerical vice and not normal and natural sexual activity of consenting adults in private. Therefore we do not regard defendants' conduct as involving the exercise of a fundamental personal right protected by the Fourteenth Amendment".

See also, People v. Zeihm, 115 Cal.Rptr. 528, People v. American Art Enterprises Inc., et al., 142 Cal.Rptr. 338 at 340 and Judge Hanson's discussion of Fixler at page 348-351. See also, People v. Haskin, 55 Cal.App.3d 231 at 242, 127 Cal.Rptr. 426, 433 (March 3, 1976).

II

THE COURT OF APPEALS ERRED IN ITS CONCLUSION OF LAW THAT THE TRIAL FACTS HEREIN PRESENT A JURY QUESTION ON THE ISSUE OF "FAIR USE".

Petitioners submit that the most conspicuous error in the Ninth Circuit's opinion is its conclusion of law which holds that, even though: (1) the motion picture films are obscene as a matter of law under federal standards, and (2) the city councilmen were acting at a regular council meeting within the scope of their official duties, to conduct investigations and direct the City Attorney to take legal action to abate obscene films which are being exhibited within the City, and (3) such city council procedures are specifically set forth in a city ordinance; nevertheless, the taking of photographs and sound recordings of exhibitions of such obscene films by city officials for use solely as evidence

in such city council proceedings, and in the abatement lawsuit in the state court, will subject each of such councilmen to a jury trial and potential personal liability for money damages in a copyright infringement lawsuit, and for attorney's fees in his defense of that lawsuit!

Assuming, arguendo, that the plaintiffs hold copyrights on their motion pictures, the Copyright Act in 17 U.S.C. 107 provides that ". . . the fair use of a copyrighted work . . . is not an infringement of copyright." In his Findings of Fact and Conclusions of Law Re Motion For Costs and Attorney's Fees, filed October 31, 1979, U.S. District Judge Waters aptly delineated the use which the defendants made of the plaintiffs' motion pictures in findings of fact 3-9. (C.R. 140 at pages 2 and 3): (See Appendix C-11 to C-22 herein) On appeal, the

respondents did not contest such findings of fact but contended that, as a matter of law, the judicial conclusion of "fair use" now codified in 17 U.S.C., Section 107 above, cannot be drawn from those facts (A.O.B. at page 11, lines 13-14; page 17, lines 15-23). They made that claim in the face of the fact findings, which they do not contest on appeal, that the five films (1) are obscene under Miller standards, and (2) were copied by the defendants in their official capacity, and (3) the copies were made for use as evidence for the City Council's consideration in deciding whether a public nuisance abatement action should be filed and in court proceedings (A.O.B. at page 13, lines 10-13, lines 21-23). The Court of Appeals' opinion now holds that, on such facts, the City Councilmen are required to join issue in a jury trial.

Petitioners submit that it would be a gross miscarriage of justice to permit this decision to stand as an authority that, in such cases, a jury issue is raised. The trial record herein clearly establishes "fair use" as a matter of law.

On the above factual record, the defendants Bricken, Ward, Brandt and Ortiz, as individuals, have an absolute immunity for their actions in the sphere of legitimate legislative activity, and the defendant, Clancy, as an individual, has absolute immunity as a prosecutor in his actions in initiating and presenting the state's case. Owen v. City of Independence, Missouri et al., 445 U.S. 622, 63 L.Ed.2d 673, 100 S.Ct. 1398 (April 16, 1980) at footnote 37 and 38; Lake Country Estates Inc. v. Tahoe Planning Agency, 440 U.S. 391 (1979); Imbler v. Pachtman, 424 U.S. 409, 417 (1976). For the same reasons, the rationale which

supports the doctrine of official immunity in such civil rights cases,[4/] should also require that the uses described in the above findings of fact qualify as "fair uses" as a matter of law under the judicial doctrine of "fair use" defined above.

III

THE COURT OF APPEALS' PUBLIC POLICY EXPRESSION THAT "PRAGMATISM FURTHER COMPELS A REJECTION OF AN OBSCENITY DEFENSE" SIGNIFIES A SUFFICIENT DEPARTURE FROM THE DUTY OF AN APPELLATE COURT, TO FOLLOW STARE DECISIS AND APPLY STANDARD RULES OF STATUTORY CONSTRUCTION, TO WARRANT THIS COURT'S REVIEW UNDER RULE 17.1(a).

Petitioners contend that the Fifth and Ninth Circuit's refusal to follow (or differentiate) prior precedent, which holds obscene matter may not be copyright-

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4/ See Scheuer v. Rhodes, 416 U.S. 232, at 240, cited in Owen v. City of Independence, Missouri, supra:

> "(1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligation of his position, to exercise discretion; (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good."

ed, (see Point I(A)(2)(b) at page 30, supra) and failure to address itself to the serious issues on statutory construction raised in Petitioners' brief, which would require related statutes and treaties on the same subject or serving the same purpose to be construed together (in pari materia), (see Point I(A)(2)(c) at page 33, supra) is a sufficient departure from the normal course of appellate procedure to warrant an exercise of this Court's power of supervision under Rule 17.1(a). It should be a matter of great concern that a new rule of copyright law can be arrived at by simply ignoring issues raised by litigants regarding past precedent and cardinal rules of statutory construction.

The Court of Appeals' application of its "pragmatic" rule as a substitute for established precedent and applicable rules of statutory construction would be less

objectionable were the Courts' "pragmatism" sufficiently grounded in reason and based upon a complete record which has considered all of the relevant factors. Unfortunately, however, such a record does not exist in this case and a number of important factors have been overlooked by those Courts. No thought has been given to how this decision may affect the real problem that faces our society, at the present, with the introduction of hard-core pornography to T.V. and local neighborhoods via videocassette tapes. The impact of this decision on future television presentations should be cause for great alarm.

Facts of general knowledge in the trade show that the manufacturers of pornographic movies are presently grouped in two camps: one camp, represented by the plaintiffs herein is advocating the registration of every pornographic movie being

produced. The other camp is unwilling to run the risk of what this Court's final decision on the matter may be and prefers that its identity as a manufacturer should remain anonymous.

The immediate danger is that this Court's refusal to review this issue will send a signal to the membership in the pornographic trade to go ahead and register every pornographic movie. Petitioners submit that the catastrophic consequences of that developement on the local, national and international scene is self evident.

CONCLUSION

The judgment of the Court of Appeals below should be reversed and remanded for reconsideration in light of the following principles:

(1) The five motion pictures are obscene per se under federal copyright standards.

(2) Plaintiffs' case-in-chief failed

to present a question of fact for the jury's determination, in that the proofs on copyright ownership which were offered (certified copies of 5 Certificates of Registration of a Claim to Copyright), while technically correct, in light of the nature of the subject matter, were insufficient as a matter of law, and failed to establish ownership of any copyright interest which would support a copyright infringement claim.

(3) The five Certificates of Registration of a Claim to a Copyright were issued in error and are invalid as a matter of law (void).

(4) The defendants' motion for a directed verdict should have been granted.

(5) The special jury verdicts which were returned are supported by sufficient evidence.

(6) The defendants' use of the copies was "fair use" as a matter of law.

DATED: May 9, 1982

Respectfully submitted,

_____

James J. Clancy
Attorney for Petitioners.

CERTIFICATE OF SERVICE

I, hereby certify that on this ____ day of May, 1982, the original and 40 copies of the within Petition for Writ of Certiorari were deposited in the United States Post Office in Phoenix, Arizona, with first-class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court.

I further certify that three (3) copies were also mailed, postage prepaid, to the below listed parties to the proceedings and that all parties required to be served have been served.

LAW OFFICE OF ROBERT L. THORP
1524 California Street
San Francisco, California 94109

_____
James J. Clancy
9055 La Tuna Cyn. Rd.
Sun Valley, CA 91352

Attorney for Petitioner.

Appendix

APPENDIX A

Opinion of the United States Court of Appeals, Ninth Circuit, in Jartech, Inc., et al. v. Clancy, et al., 666 F.2d 403 (Jan. 25, 1982)

. . . . A-1 thru A-22

JARTECH, INC., Anatuna, Inc., Cinema 7, Inc., and Mooks, Inc., all California Corporations, Plaintiffs-Appellants,

v.

James J. CLANCY, Gordon Bricken, James E. Ward, David L. Brandt, David F. Ortiz, Defendants-Appellees.

JARTECH, INC.; Anatuna, Inc.; Cinema Seven, Inc.; and Mooks, Inc., all California Corporations, Plaintiffs-Appellants,

v.

James J. CLANCY; Gordon Bricken; James E. Ward; David L. Brandt; David F. Ortiz, Defendants-Appellees.

James J. CLANCY, Gordon Bricken, James E. Ward, David L. Brandt, David F. Ortiz, Counter-Claimants/Appellants,

v.

JARTECH, INC., Anatuna, Inc., Cinema 7, Inc., and Mooks, Inc., all California

Corporations, James Mitchell, Artie Mitchell, Mitchell Brothers Film Group, a general partnership, Counter-Defendants/Appellees. Nos. 79-3087, 80-5010 and 80-5016.

United States Court of Appeals, Ninth Circuit.

Jan. 25, 1982.

Appeal from the United States District Court for the Central District of California.

Before HUG and SKOPIL, Circuit Judges, and MUECKE, District Judge.

MUECKE, District Judge:

This series of appeals raises for the first time in this circuit the issue of whether obscenity is a defense to a copyright infringement claim. This court has also been asked to determine whether use of copies of a copyrighted work by a local government in a nuisance abatement action is within the fair use

exception to the copyright laws. Review is also sought of the trial court's award of attorney's fees upon the finding that the initiation of the suit was vexatious, and its dismissal of a counterclaim which sought a declaration that the copyrighted movies involved herein were obscene as a matter of law.

BACKGROUND

James and Artie Mitchell are the producers, distributors and displayers of adult movies. The plaintiffs below (hereinafter, "Mitchells"), are entities, controlled by the Mitchells, which perform these various functions. The defendants in the trial court were attorney James Clancy, and four individual members of the Santa Ana City Council (hereinafter collectively referred to as "the Council").

On January 19, 1976, Clancy entered into a contract with the City of Santa Ana to act as special counsel to the city for the drafting, adoption and implementation of a public nuisance abatement ordinance aimed at ridding the city of its adult movie theaters. Subsequently, the Council adopted a city ordinance which declared that certain cinematic depictions of sexual activities constituted a nuisance. Later, an amendment to the ordinance provided a procedure for the abatement of such nuisances. On October 26, 1976, the Council adopted a resolution declaring a Mitchell Brothers' theatre to be a nuisance for exhibiting such films. The City Attorney was ordered to abate the nuisance and all of the Mitchells' licenses and permits were revoked.

On October 12, 1976, the Mitchells

filed a suit against the Council for copyright infringement of five properly copyrighted motion pictures. The complaint alleged that an agent of the Council surreptitiously entered their theatre in Santa Ana and employed a process perfected by Clancy, whereby photographs were taken every few seconds of the visual screen images while a tape recorder recorded the entire soundtrack of the films. The photographs were subsequently reproduced in small prints of fifty per page, with the dialogue from the tape recordings printed underneath. These materials were used by the Council in determining that the theatre was a nuisance and in the subsequent abatement proceedings against the Mitchell theatre.

The Mitchells' copyright infringement suit proceeded to trial and on December 14, 1978, the jury returned special

verdicts which found that: "(1) each defendant was responsible for the copying of five movies to which the plaintiffs held a copyright; (2) the use made by the defendants of the copy of the films was a fair use; (3) each film was obscene; and, (4) The profits realized by the defendants as a result of the infringement of the copyright for each film was 'none.'"

On June 29, 1979, the trial court considered a counterclaim filed by the Council, which sought a declaratory judgment that the five pictures were obscene as a matter of law and should be seized as contraband. The court found that the action had been rendered moot by the determination made in the case-in-chief and that there no longer existed a case or controversy between the parties. Upon these findings, the

court concluded that it lacked jurisdiction to render a declaratory judgment on the issue of the obscenity vel non of the films, that it lacked the jurisdiction to authorize the forfeiture of materials found to be outside the copyright laws, and that federal copyright law made no specific provision for the exclusion of "immoral articles" or "obscene matter" from its protection.

On October 31, 1979, the trial court entered judgment for the Council and against the Mitchells for $23,157.11 in attorney's fees. This judgment was based upon the conclusion that the copyright infringement suit brought by the Mitchells was vexatious and brought to harass the defendants. The court noted that essentially the same plaintiffs had unsuccessfully tried the issue in the United States District Court in Texas.

The court felt that the timing of the suit suggested that it may have been instituted to intimidate the Council members in their consideration of the nuisance action pending against the plaintiffs. The court also questioned the plaintiffs' intent in bringing the suit against some, but not all, of the Council members in their individual capacities and in naming special counsel Clancy as a defendant, but not including the actual agent who made the film and sound reproductions.

From these actions, the Mitchells have appealed the special verdicts returned by the jury, finding that obscenity is a defense to a copyright infringement action and that the Council's use was a fair use. They have also appealed the award of attorney's fees. The Council has appealed the court's dismissal of its counterclaim.

THE COPYRIGHTABILITY OF OBSCENITY

Throughout pretrial proceedings and at trial, the Mitchells unsuccessfully asserted that obscenity was not a valid defense to a claim of infringement.

The Constitution authorizes the granting of copyrights "(t)o promote the Progress of Science and useful Arts," U.S. Const. art. 1, § 8, cl. 8. In response, Congress has authorized the copyrighting of "original works of authorship." 17 U.S.C. § 102 (1976). The Council argues that Congress may not grant copyright protection to obscenity as that would defy the constitutional mandate of promoting the progress of science and useful arts. The Mitchells assert that Congress has reasonably sought to effectuate the constitutional directive by enacting a content-free statute.

This Court, in considering the copyrightability of fraudulent materials in Belcher v. Tarbox, 486 F.2d 1087 (9th Cir. 1973), stated:

> "There is nothing in the Copyright Act to suggest that the courts are to pass upon the truth or falsity, the soundness or unsoundness, of the views embodied in a copyrighted work. The gravity and immensity of the problems, theological, philosophical, economic and scientific that would confront a court if this view were adopted are staggering to contemplate. It is surely not a task lightly to be assumed, and we decline the invitation to assume it. 486 F.2d at 1088."

The Belcher decision was relied upon by the Fifth Circuit in rejecting obscenity as a defense to copyright

infringement in a case which also involved the Mitchells. Mitchell Brothers Film Group v. Cinema Adult Theatre, 604 F.2d 852 (5th Cir. 1979), cert. denied, 445 U.S. 917, 100 S.Ct. 1277, 63 L.Ed.2d 601 (1980). That opinion traced the history of copyright laws, and in it the Fifth Circuit observed that any time a content-based statute had been passed by Congress, it has shortly thereafter been replaced with a content-free law.

The leading treatise on copyright has called the Fifth Circuit's Mitchell Brothers case "the most thoughtful and comprehensive analysis of the issue." Nimmer on Copyright, § 2.17, p. 2-194.2 (1980). Nimmer also considers Mitchell Brothers to represent the prevailing view on this issue. Id. While the case dealt with the now repealed Copyright Act of 1909, specifically 17 U.S.C.

§ 4, the language of the present statute requires the same interpretation. Prior law referred to "all writings of an author," while the current statute employs the similar phrase "original works of authorship." 17 U.S.C. § 102 (1976).

Pragmation further compels a rejection of an obscenity defense. Under the dictates of Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), obscenity is a community standard which may vary to the extent that controls thereof may be dropped by a state altogether. Paris Adult Theatres I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628 37 L.Ed.2d 446 (1973); United States v. 2,200 Paper Back Books, 565 F.2d 566, 569-70 (9th Cir. 1977). Acceptance of an obscenity defense would fragment copyright enforcement, protecting registered materials in a certain community, while, in effect, authorizing pirating in

another locale.

FAIR USE

In returning one of its special verdicts, the jury found that the use made by the Council of the copies of the films was a "fair use." Fair use is a statutory defense to copyright liability. 17 U.S.C. § 107.

In its presentation to the jury, the Council had argued that because it had not commercially exploited the Mitchells' copyright, but had used it in a nuisance abatement proceeding, its use was within the safe harbor of fair use. The Mitchells have challenged the jury's determination of fair use and the trial court's instruction on the defense.

Recently, this Court closely scrutinized the fair use doctrine. Universal City Studios, Inc. v. Sony Corp.

of America, 659 F.2d 963, at 972-974 (9th Cir. 1981). Therein, it was determined, inter alia, that the copying of telecasts of copyrighted audiovisual materials by owners of video recorders in their homes for their own private noncommercial use was an infringement of the copyright laws. Specifically, the Sony Court found that such copying was not a fair use.

In coming to this conclusion, the Court first examined whether the alleged infringers reproduced the work for its intrinsic purpose. In other words, did the alleged infringers copy the material to use it for the same purpose that the copyright holder intended his audience to use or enjoy the work.

The Sony opinion then examined 17 U.S.C. § 107, which illustratively sets forth the parameters of fair use. Section 107 directs the consideration of: (1)

the purpose and character of the use, including whether such use is commercial or nonprofit; (2) the nature of the copyrighted work; (3) the amount of copying involved; and, (4) the effect of the copying on the market of the copyrighted work. Id.

In Sony, this Court found that the use made by the alleged infringers was the same intrinsic use to which the copyright holders expected protection from unauthorized use. Such a finding is strong indicia of finding no fair use. As this conclusion was not contradicted by the statutory analysis, the Court found no fair use and an infringement of the law.

In this case, the use to which the alleged infringers put the copy is not an intrinsic use. The alleged infringers made abbreviated copies of the films,

not for subsequent use and enjoyment, but for evidence to be used in the nuisance abatement proceedings. The suggestion of fair use made by the finding that the copies were not made for intrinsic use is not contradicted by application of Section 107's criteria. While the statutory standards are not precisely applicable to the facts at bar, because there was evidence that the Council's use was neither commercially exploitive of the copyright, nor commercially exploitive of the copyright holder's market, the jury's verdict is certainly supported by substantial evidence.

The district court instructed the jury on fair use, essentially in terms of the Section 107 criteria. The propriety of giving the fair use instruction may have been a closer question were it not for the fact that the record

reveals that the Mitchells proferred or at least acquiesced in the giving of the fair use instruction. Having failed to object to the giving of the instruction, the Mitchells may not now challenge the instruction as erroneous. Rule 51, F.R. Civ. P.

ATTORNEY'S FEES

Section 505 of the Copyright Act and its predecessor which was in effect at the time of this suit, Section 116, authorize the award of attorney's fees to the prevailing party in a lawsuit. 17 U.S.C. § 505 (1976); 17 U.S.C. § 116 (repealed). When attorney's fees are awarded to a prevailing defendant, the award represents a penalty for the institution of a frivolous or bad faith suit. Edward B. Marks Music Corp. v. Continental Record Co., 222 F.2d 488, 493 (2d Cir. 1955) cert. denied, 350 U.S.

861, 76 S.Ct. 101, 100 L.Ed. 764 (1955); Overman v. Loesser, 205 F.2d 521, 524 and n. 9 (9th Cir. 1953).

The court based its award of fees to the defendants on the grounds that the same issue had been decided against the plaintiffs in a recent district court case in Texas, and that the chronology of events led the court to believe that the suit was instituted for purposes of intimidation.

The Texas district court decision has since been reversed by the Fifth Circuit. Mitchell Brothers Film Group v. Cinema Adult Theatre, 604 F.2d 852 (5th Cir. 1979), cert. denied, 445 U.S. 917, 100 S.Ct. 1277, 63 L.Ed.2d 601 (1980). While the district court decision will not be reversed in this case, the Mitchells' prosecution of obscenity as a defense was not only not frivolous, but their position has ultimately been

accepted. Furthermore, the Mitchells have offered explanations for their prosecution of this suit, which, in the opinion of this court, reflect a sincere interest in the settlement of close legal questions. The plaintiffs initiated this suit only after defendants had reproduced and used their registered properties in a manner which was arguably illegal.

In light of the foregoing, the trial court's award of attorney's fees is reversed.

PER SE OBSCENITY

The Council has appealed the dismissal of their counterclaim. The counterclaim sought a determination that the movies in question were "obscene per se" and urged the court to order the seizure and destruction of all prints of the films.

The court, with a verdict that obscenity constituted a defense to copyright infringement, determined that there was no longer a controversy between the parties and dismissed the counterclaim as being moot. The court made the alternate conclusions that the complaint failed to state a claim upon which relief could be granted and that the court was without the jurisdiction to order seizure and destruction of such materials.

While the decision below, that obscenity is a valid defense is incorrect, the Council's activities have been immunized by the jury's finding that their's was a fair use. As a consequence, the obscenity per se issue is still moot.

Additionally, the trial court's handling of the merits was entirely correct. There is nothing in the Copyright

Act to suggest that the Court has the authority to order forfeiture and destruction of obscene materials. See 17 U.S.C. §§ 501-10, Copyright Infringement and Remedies. Furthermore, the Council's request that the movies be found obscene as a matter of law flies in the face of settled Supreme Court case law which unquestionably establishes this as a factual determination. Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L. Ed.2d 419 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973).

CONCLUSION

The decision of the trial court, finding the Council not liable for a copyright infringement, is affirmed. While this court does not agree that obscenity constitutes a defense to a copyright claim, the jury's verdict that

the use of the copyrighted materials was a fair use was not clearly erroneous.

The dismissal of the Council's counterclaim was also appropriate and is affirmed. The award of attorney's fees to the Council is reversed.

AFFIRMED in part; REVERSED in part.

APPENDIX B

Judgment on the Verdict (for Defendants) in Jartech, Inc., et al. v. Clancy, et al., CV 76-3191-LEW, entered Dec. 12, 1978 . . . . B-1 thru B-2

Special Verdict in Jartech, Inc., et al. v. Clancy, et al., CV 76-3191-LEW, filed Dec. 14, 1978 . . . . . B-3 thru B-23

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., et al Plaintiffs -vs- JAMES J. CLANCY, et al Defendants	CASE NO. CV 76-3191-LEW JUDGMENT ON THE VERDICT (FOR DEFENDANTS)

ENTERED
DEC 12 1978
CLERK U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY

DEPUTY

FILED
DEC 19 1978
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA BY

DEPUTY

This cause having been tried by the Court and a Jury, before the Honorable Laughlin E. Waters, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the defendants (SEE SEPARATE SPECIAL

VERDICT) and recover of and from the plaintiffs (SEE SEPARATE SPECIAL VERDICT), together with costs, taxed in the sum of $_____.

Edward M. Kritzman, Clerk
United States District
Court

DATED: 12-15-78 by: Paul Smith
Deputy Clerk

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California corporations, Plaintiffs, v. JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Defendants.	CIVIL ACTION NO. 76-3191-LEW SPECIAL VERDICT FILED DEC 14 1978 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Counter-Claimants, v. JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations, JAMES MITCHELL, ARTIE MITCHELL, MITCHELL BROTHERS' FILM GROUP, a general partnership, Counter-Defendants.	

We, the jury, for our verdict, say that:

1(a). Defendant, James J. Clancy (did not) infringe a copyright as to the film known as "Behind the Green Door."

1(b). Defendant, James J. Clancy, (did not) infringe a copyright as to the film known as "Resurrection of Eve."

1(c). Defendant, James J. Clancy, (did not) infringe a copyright as to the film known as "Sodom and Gomorrah."

1(d). Defendant, James J. Clancy, (did not) infringe a copyright as to the film known as "Inside Marilyn Chambers."

1(e). Defendant, James J. Clancy, (did not) infringe a copyright as to the film known as "The Autobiography of a Flea."

2(a). Defendant, Gordon Bricken, (did not) infringe a copyright as to the film known as "Behind the Green Door."

2(b). Defendant, Gordon Bricken, (did not) infringe a copyright as to the film known as "Resurrection of Eve."

2(c). Defendant, Gordon Bricken, (did not) infringe a copyright as to the film known as "Sodom and Gomorrah."

2(d). Defendant, Gordon Bricken, (did not) infringe a copyright as to the film known as "Inside Marilyn Chambers."

2(e). Defendant, Gordon Bricken, (did not) infringe a copyright as to the film known as "The Autobiography of a Flea."

3(a). Defendant, James E. Ward, (did not) infringe a copyright as to the film known as "Behind the Green Door."

3(b). Defendant, James E. Ward, (did not) infringe a copyright as to the film known as "Resurrection of Eve."

3(c). Defendant, James E. Ward, (did not) infringe a copyright as to the

film known as "Sodom and Gomorrah."

3(d). Defendant, James E. Ward, (did not) infringe a copyright as to the film known as "Inside Marilyn Chambers."

3(e). Defendant, James E. Ward, (did not) infringe a copyright as to the film known as "The Autobiography of a Flea."

4(a). Defendant, David L. Brandt, (did not) infringe a copyright as to the film known as "Behind the Green Door."

4(b). Defendant, David L. Brandt, (did not) infringe a copyright as to the film known as "Resurrection of Eve."

4(c). Defendant, David L. Brandt, (did not) infringe a copyright as to the film known as "Sodom and Gomorrah."

4(d). Defendant, David L. Brandt, (did not) infringe a copyright as to the film known as "Inside Marilyn Chambers."

4(e). Defendant, David L. Brandt, (did not) infringe a copyright as to the film known as "The Autobiography of a Flea."

5(a). Defendant, David F. Ortiz, (did not) infringe a copyright as to the film known as "Behind the Green Door."

5(b). Defendant, David F. Ortiz, (did not) infringe a copyright as to the film known as "Resurrection of Eve."

5(c). Defendant, David F. Ortiz, (did not) infringe a copyright as to the film known as "Sodom and Gomorrah."

5(d). Defendant, David F.

Ortiz, (did not) infringe a copyright as to the film known as "Inside Marilyn Chambers."

5(e). Defendant, David F. Ortiz, (did not) infringe a copyright as to the film known as "The Autobiography of a Flea."

II

1(a). Defendant, James J. Clancy, intentionally (was) responsible for the copying of the film known as "Behind the Green Door."

1(b). Defendant, James J. Clancy, intentionally (was) responsible for the copying of the film known as "Resurrection of Eve."

1(c). Defendant, James J. Clancy, intentionally (was) responsible for the copying of the film known as "Sodom and Gomorrah."

1(d). Defendant, James J.

Clancy, intentionally (was) responsible for the copying of the film known as "Inside Marilyn Chambers."

1(e). Defendant, James J. Clancy, intentionally (was) responsible for the copying of the film known as "The Autobiography of a Flea."

2(a). Defendant, Gordon Bricken, intentionally (was) responsible for the copying of the film known as "Behind the Green Door."

2(b). Defendant, Gordon Bricken, intentionally (was) responsible for the copying of the film known as "Resurrection of Eve."

2(c). Defendant, Gordon Bricken, intentionally (was) responsible for the copying of the film known as "Sodom and Gomorrah."

2(d). Defendant, Gordon Bricken, intentionally (was) responsible for the

copying of the film known as "Inside Marilyn Chambers."

2(e). Defendant, Gordon Bricken, intentionally (was) responsible for the copying of the film known as "The Autobiography of a Flea."

3(a). Defendant, James E. Ward, intentionally (was) responsible for the copying of the film known as "Behind the Green Door."

3(b). Defendant, James E. Ward, intentionally (was) responsible for the copying of the film known as "Resurrection of Eve."

3(c). Defendant, James E. Ward, intentionally (was) responsible for the copying of the film known as "Sodom and Gomorrah."

3(d). Defendant, James E. Ward, intentionally (was) responsible for the copying of the film known as "Inside

Marilyn Chambers."

3(e). Defendant, James E. Ward, intentionally (was) responsible for the copying of the film known as "The Autobiography of a Flea."

4(a). Defendant, David L. Brandt, intentionally (was) responsible for the copying of the film known as "Behind the Green Door."

4(b). Defendant, David L. Brandt, intentionally (was) responsible for the copying of the film known as "Resurrection of Eve."

4(c). Defendant, David L. Brandt, intentionally (was) responsible for the copying of the film known as "Sodom and Gomorrah."

4(d). Defendant, David L. Brandt, intentionally (was) responsible for the copying of the film known as "Inside Marilyn Chambers."

4(e). Defendant, David L. Brandt, intentionally (was) responsible for the copying of the film known as "The Autobiography of a Flea."

5(a). Defendant, David F. Ortiz, intentionally (was) responsible for the copying of the film known as "Behind the Green Door."

5(b). Defendant, David F. Ortiz, intentionally (was) responsible for the copying of the film known as "Resurrection of Eve."

5(c). Defendant, David F. Ortiz, intentionally (was) responsible for the copying of the film known as "Sodom and Gomorrah."

5(d). Defendant, David F. Ortiz, intentionally (was) responsible for the copying of the film known as "Inside Marilyn Chambers."

5(e). Defendant, David F. Ortiz,

intentionally (was) responsible for the copying of the film known as "The Autobiography of a Flea."

III

1. The use made by defendants of the copy of the film known as "Behind the Green Door" (was) fair use.

2. The use made by defendants of the copy of the film known as "Resurrection of Eve" (was) fair use.

3. The use made by defendants of the copy of the film known as "Sodom and Gomorrah" (was) fair use.

4. The use made by defendants of the copy of the film known as "Inside Marilyn Chambers" (was) fair use.

5. The use made by defendants of the copy of the film known as "The Autobiography of a Flea" (was) fair use.

IV

1. The film known as "Behind the

Green Door" (is) obscene.

2. The film known as "Resurrection of Eve" (is) obscene.

3. The film known as "Sodom and Gomorrah" (is) obscene.

4. The film known as "Inside Marilyn Chambers" (is) obscene.

5. The film known as "The Autobiography of a Flea" (is) obscene.

V

1(a). The profits realized by defendant, James J. Clancy, as a result of the infringement of the copyright for the film known as "Behind the Green Door" was (x none/$ X).

1(b). The profits realized by defendant, James J. Clancy, as a result of the infringement of the copyright for the film known as "Resurrection of Eve" was (X none/$ X).

1(c). The profits realized by

defendant, James J. Clancy, as a result of the infringement of the copyright for the film known as "Sodom and Gomorrah" was (X none/$ X).

1(d). The profits realized by defendant, James J. Clancy, as a result of the infringement of the copyright for the film known as "Inside Marilyn Chambers" was (X none/$ X).

1(e). The profits realized by defendant, James J. Clancy, as a result of the infringement of the copyright for the film known as "The Autobiography of a Flea" was (X none/$ X).

2(a). The profits realized by defendant, Gordon Bricken, as a result of the infringement of the copyright for the film known as "Behind the Green Door" was (X none/$ X).

2(b). The profits realized by defendant, Gordon Bricken, as a result

of the infringement of the copyright for the film known as "Resurrection of Eve" was (X none/$ X).

2(c). The profits realized by defendant, Gordon Bricken, as a result of the infringement of the copyright for the film known as "Sodom and Gomorrah" was (X none/$ X).

2(d). The profits realized by defendant, Gordon Bricken, as a result of the infringement of the copyright for the film known as "Inside Marilyn Chambers" was (X none/$ X).

2(e). The profits realized by defendant, Gordon Bricken, as a result of the infringement of the copyright for the film known as "The Autobiography of a Flea" was (X none/$ X).

3(a). The profits realized by defendant, James E. Ward, as a result of the infringement of the copyright for

the film known as "Behind the Green Door" was (X none/$ X).

3(b). The profits realized by defendant, James E. Ward, as a result of the infringement of the copyright for the film known as "Resurrection of Eve" was (X none/$ X).

3(c). The profits realized by defendant, James E. Ward, as a result of the infringement of the copyright for the film known as "Sodom and Gomorrah" was (X none/$ X).

3(d). The profits realized by defendant, James E. Ward, as a result of the infringement of the copyright for the film known as "Inside Marilyn Chambers" was (X none/$ X).

3(e). The profits realized by defendant, James E. Ward, as a result of the infringement of the copyright for the film known as "The Autobiography of

a Flea" was (X none/$ X).

4(a). The profits realized by defendant, David L. Brandt, as a result of the infringement of the copyright for the film known as "Behind the Green Door" was (X none/$ X).

4(b). The profits realized by defendant, David L. Brandt, as a result of the infringement of the copyright for the film known as "Resurrection of Eve" was (X none/$ X).

4(c). The profits realized by defendant, David L. Brandt, as a result of the infringement of the copyright for the film known as "Sodom and Gomorrah" was (X none/$ X).

4(d). The profits realized by defendant, David L. Brandt, as a result of the infringement of the copyright for the film known as "Inside Marilyn Chambers" was (X none/$ X).

4(e). The profits realized by defendant, David L. Brandt, as a result of the infringement of the copyright for the film known as "The Autobiography of a Flea" was (X none/$ X).

5(a). The profits realized by defendant, David F. Ortiz, as a result of the infringement of the copyright for the film known as "Behind the Green Door" was (X none/$ X).

5(b). The profits realized by defendant, David F. Ortiz, as a result of the infringement of the copyright for the film known as "Resurrection of Eve" was (X none/$ X).

5(c). The profits realized by defendant, David F. Ortiz, as a result of the infringement of the copyright for the film known as "Sodom and Gomorrah" was (X none/$ X).

5(d). The profits realized by

defendant, David F. Ortiz, as a result of the infringement of the copyright for the film known as "Inside Marilyn Chambers" was (X none/$ X).

5(e). The profits realized by defendant, David F. Ortiz, as a result of the infringement of the copyright for the film known as "The Autobiography of a Flea" was (X none/$ X).

If you find that the defendants have infringed the plaintiffs' copyrights, and that profits may not reasonably be determined from the evidence, or that no profits have been shown, you must award statutory damages in lieu of profits. To award statutory damages, please complete this section.

1. If you find that defendants infringed plaintiffs' copyright in the film "Behind the Green Door," indicate:

(a) The number of instances

of infringement: 0

(b) The statutory damages for each infringement:

$ 0

$ 0

$ 0

(c) The total amount of statutory damages for the infringement of "Behind the Green Door": $ 0

2. If you find that defendants infringed plaintiffs' copyright in the film "Resurrection of Eve," indicate:

(a) The number of instances of infringement: 0

(b) The statutory damages for each infringement: $ 0

$ 0

$ 0

(c) The total amount of statutory damages for the infringement of "Resurrection of Eve": $ 0

3. If you find that defendants infringed plaintiffs' copyright in the film "Sodom and Gomorrah," indicate:

(a) The number of instances of infringement: 0

(b) The statutory damages for each infringement: $ 0

$ 0

$ 0

(c) The total amount of statutory damages for the infringement of "Sodom and Gomorrah": $ 0

4. If you find that defendants' infringed plaintiffs' copyright in the film "Inside Marilyn Chambers," indicate:

(a) The number of instances of infringement: 0

(b) The statutory damages for each infringement: $ 0

$ 0

$ 0

(c) The total amount of statutory damages for the infringement of "Inside Marilyn Chambers": $ 0

5. If you find that defendants infringed plaintiffs' copyright in the film "The Autobiography of a Flea," indicate:

(a) The number of instances of infringement: 0

(b) The statutory damages for each infringement: $ 0

$ 0

$ 0

(c) The total amount of statutory damages for the infringement of "The Autobiography of a Flea": $

DATED: 14 December 1978

/s/ BYRNICE BUZZELLE
Foreperson of the Jury

APPENDIX C

Decision and Order for Findings of Fact, Conclusions of Law and Judgment re Motion for Costs Taxable By the Court and Attorney's Fees in Jartech, Inc., et al. v. Clancy, et al., CV 76-3191-LEW

. . . . C-1 thru C-10

Findings of Fact and Conclusions of Law Re Motion for Costs and Attorney's Fees, filed Oct. 31, 1979 in Jartech, Inc., et al. v. Clancy, et al., CV 76-3191-LEW

. . . . C-11 thru C-22

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations, Plaintiffs, v. JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Defendants.	FILED MAR 22 1979 CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY Civil No. 76-3191-LEW
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ, Counter-claimants, v. JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations, JAMES MITCHELL, ARTIE MITCHELL, MITCHELL BROTHERS' FILM GROUP, a general partnership, Counter-defendants.	DECISION AND ORDER FOR FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT RE MOTION FOR COSTS TAXABLE BY THE COURT AND ATTORNEYS' FEES.

These motions having come on regularly for hearing and the court having considered the pleadings and the arguments of counsel and being fully advised in the premises, it is the decision of the court that the defendants are entitled to an award of attorneys' fees and certain costs.

Plaintiffs brought this cause on after defendants, as members of the City Council of Santa Ana, hired defendant Clancy as special counsel to conduct an investigation solely in connection with the drafting, consideration and adoption of an ordinance in a public nuisance abatement matter. (Santa Ana Ordinance No. NS-1325, Resolution 76-134) There was no commercial or other exploitative use made of certain time-motion photos and sound track recordings taken of the subject motion pictures. The investigative actions taken fall within the ambit

of the Fair Use doctrine despite the fact that the copying and recording were extensive.

Defendants' motion for attorneys' fees and costs is premised on the following propositions:

1) Defendants are the prevailing parties;

2) Section 116 of the Copyright Statute (17 USC §116) authorizes the discretionary award of attorneys' fees to defendants when the real purpose of the suit was to "vex or harass" the opposing party rather than to fairly resolve the legal question presented.

Plaintiffs, of course, asserted a tenable legal proposition in their complaint:

1) The subject motion pictures had received a Certificate of Registration from the United States Copyright Office; and

2) The mere taking of the pictures and the recording of the sound tracks constituted per se infringements of these copyrights.

Whether this action was a good faith effort by the plaintiffs to protect against copyright infringement or whether they had some other purpose is open to some question. Plaintiffs knew that the filing of this case would inevitably raise the issue of the copyrightability of obscenity. The same issue (although in a different context) had been tried recently in the United States District Court for the Northern District of Texas (Mitchell Bros. Film Group, et al. v. Cinema Adult Theater, et al., Civil No. CA-3-74-645-D) and had been resolved adversely to the plaintiffs herein who were essentially the same real parties in interest in the Texas action. During

the proceedings in the instant case, counsel for plaintiffs urged this court to delay this action pending a decision by the 5th Circuit Court of Appeals to which the Texas action had progressed.

It is to be noted that the named defendants in the present action include some, but not all, of the members of the City Council of Santa Ana and also include the special counsel hired by the City of Santa Ana for the purpose of drafting an ordinance for the abatement of a public nuisance. These defendants were named individually and not in their elected, or professional capacities. The City of Santa Ana was not named as a defendant nor was Robert McGuire, the individual who actually took the time-motion studies and made the recordings in his role as agent for defendant Clancy. When queried, counsel for plaintiffs

gave no cogent reason why the defendants were named individually and why the City of Santa Ana was not named at all.

The chronology of events leading up to the filing of this action is enlightening. On January 19, 1976, the City Council of Santa Ana duly enacted Santa Ana Municipal Ordinance NS-1287; and on October 4, 1976, it amended the same ordinance by NS-1325, providing a procedure for the abatement of public nuisances. Section 12-105 of NS-1325 requires the City Attorney, upon a finding by resolution of the City Council that a public nuisance exists, to take action to abate said public nuisance.

Acting on the information provided to the City Council by the time-motion studies prepared by defendant Clancy and McGuire, the City Council of the

City of Santa Ana adopted, on October 26, 1976, Resolution No. 76-134, entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA DETERMINING THAT THE REAL PROPERTY AND ACTIVITY KNOWN AS THE MITCHELL BROTERS' SANTA ANA THEATER, LOCATED AT 1565 WEST 17TH STREET, SANTA ANA, CALIFORNIA, IS IN VIOLATION OF ORDINANCE NS-1325 OF THE CITY OF SANTA ANA; DECLARING SUCH ACTIVITY TO BE A PUBLIC NUISANCE, REVOKING ALL LICENSES AND PERMITS, AND ORDERING ABATEMENT; AND ORDERING THE CITY ATTORNEY TO TAKE ALL STEPS NECESSARY TO COMPLY WITH SECTION 12-105 OF THE SANTA ANA MUNICIPAL CODE."

On October 12, 1976, and thus prior to the time of the adoption of Resolution NS 76-134, the complaint was filed in the present action.

In view of the selective designation of the named defendants, the chronology

involved in the consideration and passage of Ordinance NS-135, Resolution 76-134, the date of the filing of the action, and the anticipation of subsequent action to be taken by the City of Santa Ana against the Mitchell Bros. Theater, the inference is strong that plaintiffs were merely using this lawsuit as a "fighting ship" for the purpose of intimidating the members of the Council in the performance of their official duties insofar as they might affect the plaintiffs and their related interests.

Similarly, no persuasive reason was advanced for the naming of the City of Santa Ana's special counsel as an individual defendant. The inference is equally clear that this was done for the purpose of inhibiting any professional action that Mr. Clancy might

take or be permitted to take in the future in connection with this matter. Plaintiffs were successful in the latter objective since the City of Santa Ana was compelled to associate new counsel for the trial of this action.

In light of the foregoing, it does not seem fair or equitable that the taxpayers of Santa Ana bear the entire burden of the cost of this litigation.

IT IS, THEREFORE, ORDERED that defendants are entitled to costs as prayed for, deleting therefrom items 6, 7, and 8 for a resulting total in the amount of $3,391.26, attorneys' fees in the amount of $10,417.24 for the services of James J. Clancy, Esq., and the sum of $7,000.00 plus expenses in the amount of $1,399.99 for Larry Parrish, Esq.

Counsel for defendants is directed to prepare findings of fact, conclusions

of law and judgment pursuant to Local Rule 7. (Judgment should be set forth as a separate document as required by Rule 58, F.R.Civ.P.).

DATED: This 20th day of March, 1979.

/s/ LAUGHLIN E. WATERS
Laughlin E. Waters
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations,	
Plaintiffs,	CV 76-3191-LEW
v.	FINDINGS OF FACT AND CONCLUSIONS OF LAW RE MOTION FOR COSTS AND ATTORNEYS' FEES.
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ,	
Defendants.	FILED OCT 31 1979 CLERK U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA BY _____ DEPUTY
JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, DAVID F. ORTIZ,	
Counter-claimants,	
v.	
JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., AND MOOKS, INC., all California Corporations, JAMES MITCHELL, MITCHELL BROTHERS' FILM GROUP, a general partnership,	
Counter-defendants.	

The motion for recovery of costs, including an award of attorneys' fees, came on regularly for hearing February 5, 1979, and the Court having considered the pleadings and arguments of counsel, the matter having been submitted to the Court for decision and the decision having been rendered for the defendants, the Court makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. This Court has exclusive jurisdiction to determine the copyright issues involved in this case, including the issue of attorneys' fees, under 28 U.S.C. §1338 and 17 U.S.C. §116 (now 17 U.S.C. §505).

2. Plaintiffs brought this action for alleged infringement of their copyrights in the following motion pictures:

(a) Jartech, Inc., "Behind the

Green Door",

(b) Anatuna, Inc., "Resurrection of Eve",

(c) Cinema 7, Inc., "Sodom and Gomorrah - The Last Seven Days," and "Inside Marilyn Chambers",

(d) Mooks, Inc., "The Autobiography of a Flea";

arising out of certain photos and sound track recordings taken the motion pictures which were being shown at the Mitchell Brothers' Santa Ana Theater in Santa Ana, County of Orange, State of California.

3. Defendant, James J. Clancy, was hired by the Santa Ana City Council as special counsel to conduct an investigation solely in connection with the drafting, consideration and adoption of a public nuisance abatement ordinance. (Santa Ana Ordinance No. NS 1325, Resolution 76-134)

4. In connection with the

investigation, an off-duty Los Angeles police officer, Robert McGuire, acting as agent for defendant James J. Clancy and the City Council of Santa Ana, performed services for hire by taking time-motion photographs and making sound recordings of the above-described pictures as they were exhibited at the Mitchell Brothers' Santa Ana Theater.

5. At all times complained of, defendants Gordon Bricken, James E. Ward, David L. Brandt and David F. Ortiz were members of a seven member City Council of Santa Ana, County of Orange, State of California, which hired defendant James J. Clancy.

6. A jury was impaneled at the plaintiffs' request and after trial of the issues rendered its special verdicts that (1) each of the motion pictures listed above is obscene, (2) each

defendant was intentionally responsible for the copying of each motion picture, (3) none of the defendants realized any profit from the copying, (4) the use made by the defendants of the copies was a fair use, and (5) the individual defendants did not infringe the copyrights of the above-described motion pictures.

7. In causing copies of the motion pictures to be made, the defendants acted only in their official capacities.

8. The motion pictures listed above were copies extensively for the use of the City Attorney and City Council in determining whether to bring nuisance abatement suits to stop exhibition of the pictures and operation of the Santa Ana Theater.

9. No commercial use was made of the time-motion photos and sound track recordings which were taken and made of

the listed motion pictures.

10. Plaintiffs filed this suit only after defendant City Council members had hired the defendant Clancy to conduct an investigation in connection with the drafting and consideration of a public nuisance abatement ordinance.

11. The City of Santa Ana amended Ordinance NS-1287 on October 4, 1976, to provide a procedure for the abatement of public nuisances, requiring the City Attorney to take action to abate a public nuisance upon a finding by resolution of the City Council that a public nuisance exists. Ordinance NS-1325.

12. The plaintiffs filed this law-suit on October 12, 1976.

13. The City of Santa Ana adopted a resolution declaring the Santa Ana Theater to be a public nuisance on October 26, 1979.

14. The four members of the City Council who were named as defendants were sued in their individual capacities; three other members were not named as defendants.

15. The City of Santa Ana was not named as a defendant.

16. Robert McGuire, who performed his service for hire and actually took the time-motion studies and made the recordings, was not named as a defendant.

17. The chronology of events leading to the Santa Ana resolution declaring the Santa Ana Theater to be a public nuisance, and to the filing of this action, as well as the plaintiffs' careful choice of defendants, leads to the conclusion that the plaintiffs filed this lawsuit in anticipation of subsequent action to be taken by the City of Santa Ana in order to intimidate the members of the Council in the performance of their official

duties insofar as plaintiffs' interests in these motion pictures and the Santa Ana Theater might be concerned.

18. When they filed this lawsuit, the plaintiffs knew that the copyrightability of obscenity would be an issue, that this issue had been decided against the same real parties in interest in a recent district court case in Texas (Mitchell Bros. Film Group, et al. v. Cinema Adult Theater, et al., Civil No. CA-3-74-645-D), and that an appeal from this decision was pending in the Fifth Circuit. The plaintiffs proceeded to file this lawsuit and then urged this Court to stay this action pending the Fifth Circuit decision.

19. At the hearing on this matter, plaintiffs' counsel was able to advance no persuasive reason for the naming of Santa Ana's special counsel as an

individual defendant. The clear inference is that the plaintiffs intended to inhibit any professional action that Mr. Clancy might take in the future in connection with this matter. In fact, the City of Santa Ana was compelled to associate new counsel for the trial of this action.

20. It would be inequitable to place the entire burden of the costs of this litigation on the taxpayers of Santa Ana.

21. On January 19, 1976, the City of Santa Ana, acting through its City Council, entered into an "Agreement for Legal Services" with the defendant James J. Clancy to defend the City in any litigation arising out of Ordinance No. NS-1287. Said contract called for the payment of $50.00 per hour of attorney services, plus incidental out-of-pocket expenses. On October 22, 1976, the City instructed the defendant James J. Clancy

to undertake the defense of the four City Councilmen who were named individually as defendants, pursuant to the terms and conditions of said agreement.

22. The hourly rate of $50.00 plus reimbursement for out-of-pocket office expenses is a reasonable amount based on rates charged by attorneys of comparable skill in the area.

23. In support of their fee application, the defendants have filed affidavits setting forth an itemized account of the time spent by the attorneys James J. Clancy and Larry Parrish in defending against the complaint. Based upon the accounts submitted and after consideration of the objections to the application and the comments in its support, the Court finds that $10,417.24 is a reasonable fee for the services of James J. Clancy in defense against the complaint, that

$3391.26 is reasonable reimbursement for out-of-pocket costs and expenses, that $7000 is a reasonable fee for the services of Larry Parrish in defense against the complaint and that $1399.99 is a reasonable reimbursement for his out-of-pocket costs and expenses.

CONCLUSIONS OF LAW

1. The defendants are the prevailing parties.

2. The plaintiffs filed this lawsuit in order to vex and harass the defendants. It was not a good faith effort fairly to resolve the legal questions presented. Consequently, an award of attorneys' fees to the prevailing party is appropriate.

3. The plaintiff corporations are controlled by James Mitchell and Artie Mitchell, who are individually liable for the liabilities of the corporations.

4. Full costs in an amount previously determined by the Clerk of this Court plus a reasonable attorneys' fee in the amount of $23,157.11 is recoverable from the plaintiffs.

DATED: October 30, 1979

/s/ LAUGHLIN E. WATERS

Laughlin E. Waters

United States District Judge

APPENDIX D

(Reference: Petition at pg. 8, 10.)

Time and Motion Studies* of the following 6 motion picture films, as to which the copyright office issued a "Certificate of Registration of a Claim to Copyright" to one of the Plaintiffs in the copyright infringement lawsuit:

Behind the Green Door	D-1 thru D-27
Resurrection of Eve	D-29 thru D-59
Sodom and Gomorrah - The Last Seven Days	D-61 thru D-97
The Autobiography of a Flea	D-99 thru D-133
C.B. Mamas	D-135 thru D-155
Inside Marilyn Chambers	D-157 thru D-185

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

APPENDIX D

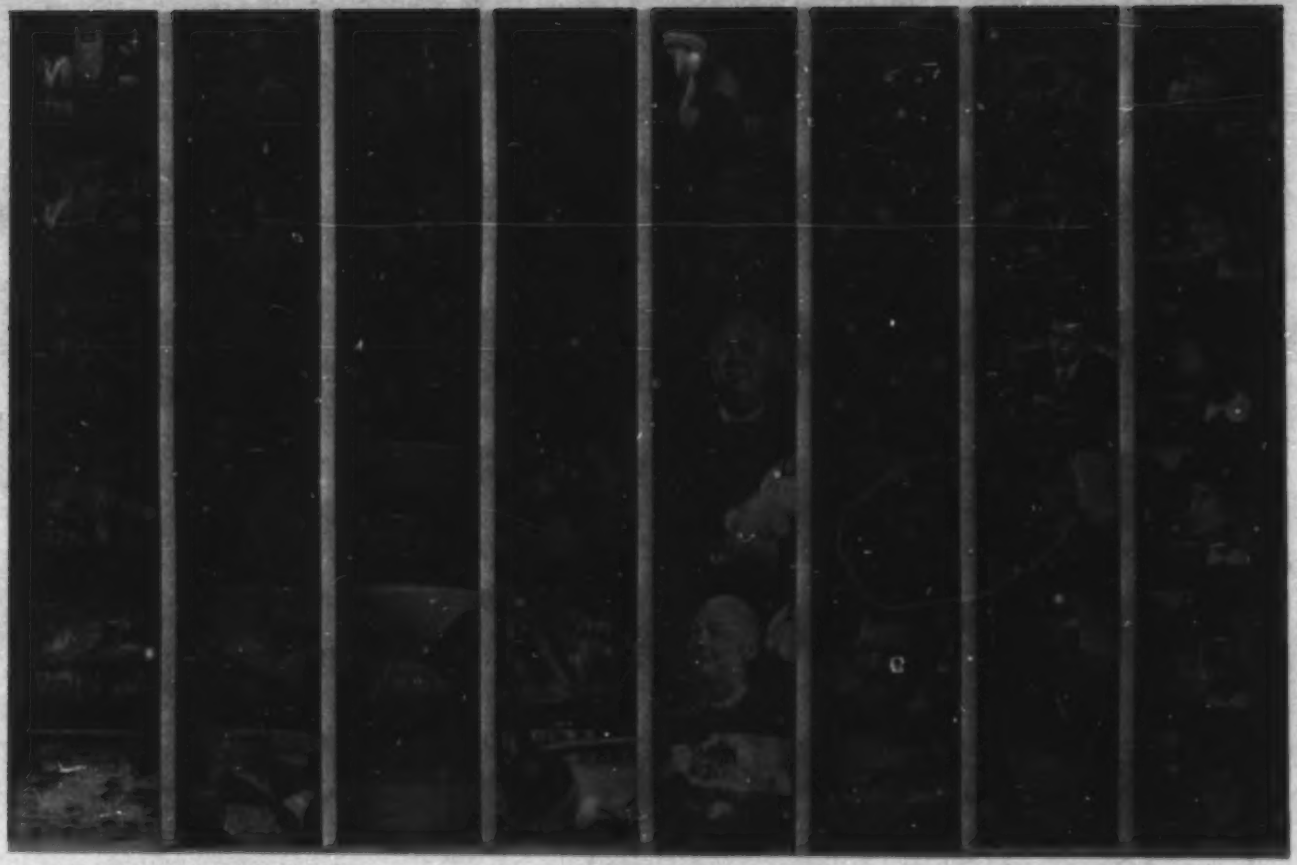
TIME-MOTION STUDY* OF THE FILM

"BEHIND THE GREEN DOOR"

The motion picture film "Behind the Green Door" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on April 18, 1973.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



"BEHIND THE GREEN DOOR"
PART 1 OF 13 PARTS

(0:17-0:24) OPENING SCENE. MALE DRIVING A VEHICLE. (0:30-1:16) SCENE SHIFTS TO INSIDE A ROADSIDE DINER. (1:19-2:13) TWO MALES SEATED IN DINER TALK WITH CHEF AS WAITRESS SERVES THEM. ONE MALE RELATES STORY. (2:15-3:27) A FLASH BACK. A SMALL CONVERTIBLE SPORTS CAR APPEARS WITH GIRL DRIVING ON WINDING ROAD AS FILM CREDITS AND TITLE APPEAR. (3:31-3:45) GIRL ARRIVES AT A RESORT AND IS GREETED BY MAN BEHIND COUNTER. (3:48-5:54) TWO MEN WHO WERE AT DINER ARE SEATED TALKING IN RESORT OPEN DINING AREA. GIRL WHO ARRIVED ENTERS SCENE AND SITS AT TABLE.

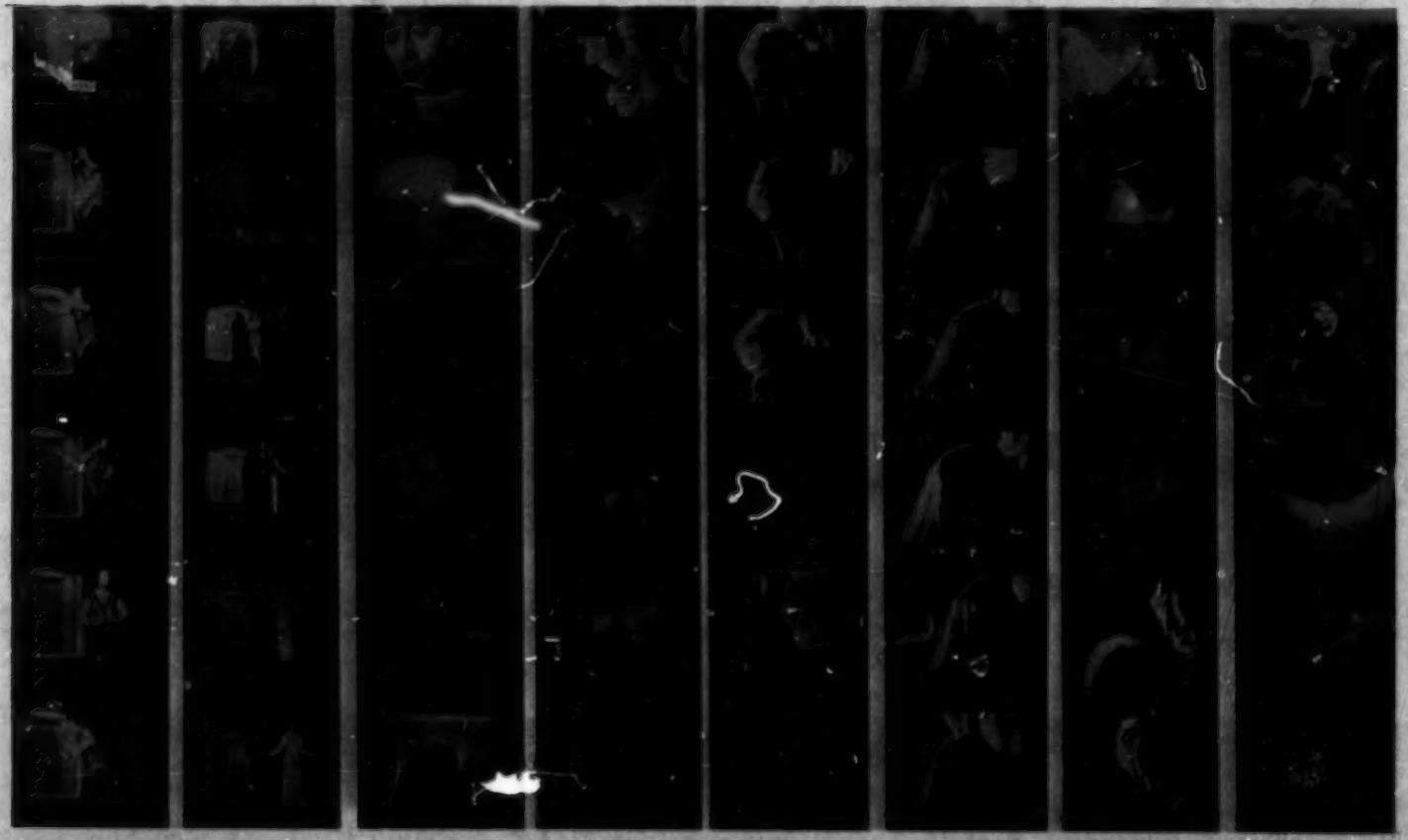
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

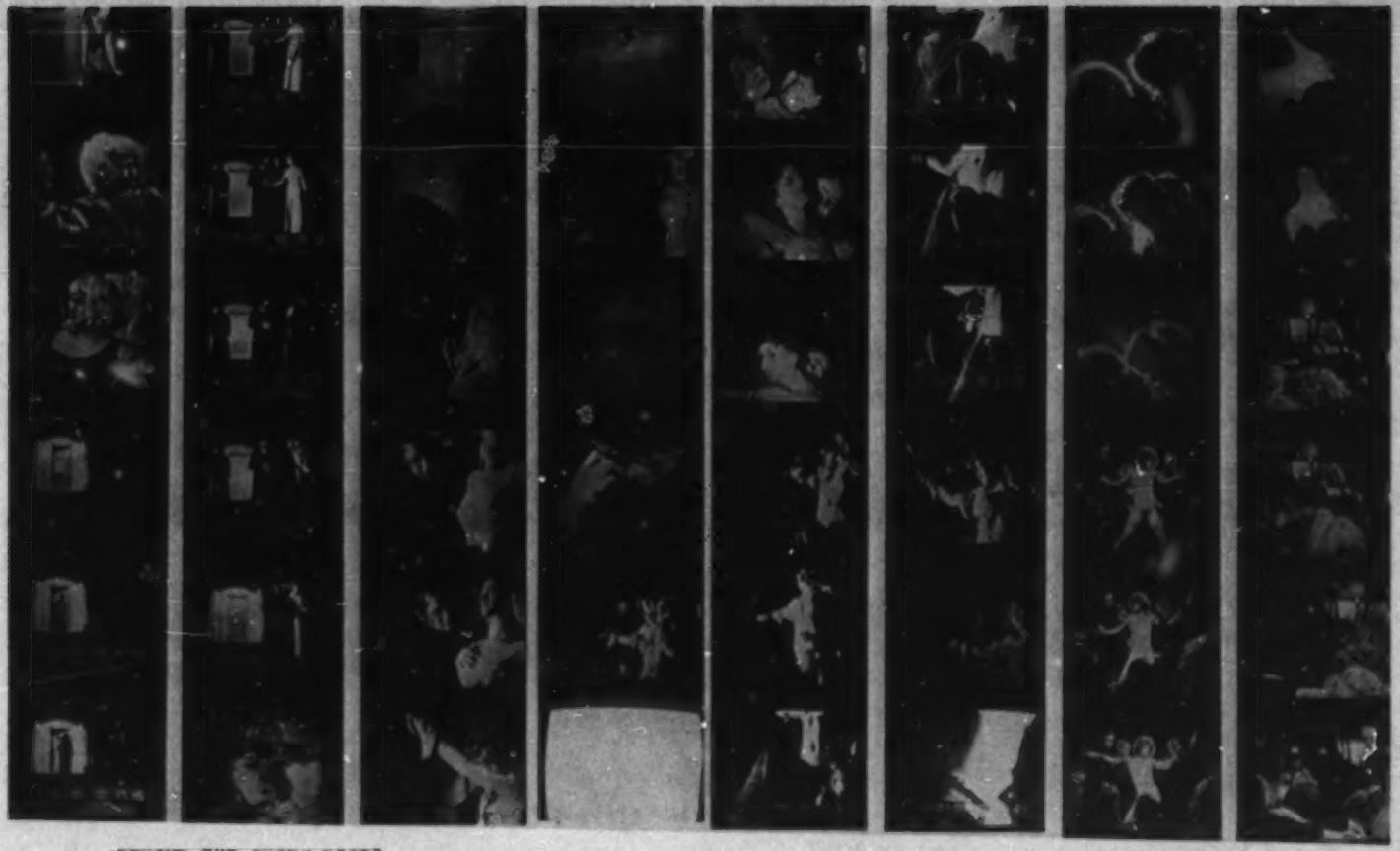
"BEHIND THE GREEN DOOR"
PART 2 OF 13 PARTS
(5:58-7:19) TWO MEN CONTINUE TALKING. (7:21-7:46) NIGHT SCENE - WOMAN DESCENDS OUTSIDE STAIRWAY. AUTO STOPS - MEN GET OUT AND FORCE WOMAN INTO CAR. ONE OF TWO ABDUCTORS RUNS AFTER AUTO SHOUTING "HEY, YOU SON-OF-A-BITCH, STOP!" (7:49-9:37) TWO MEN ENTER LARGE PLUSH-LIKE ROOM OR FOYER OF A NIGHT CLUB AND ARE MET BY LARGE THIRD MAN WHO BURSTS A FOOTBALL WITH BARE-HANDS AFTER ASKING THE TWO MEN THEIR NAMES, PUTS MASKS ON THEM AND ORDERS A WOMAN TO SHOW THEM TO THEIR SEATS. (9:41-10:19) CAMERA PANS INTERIOR OF CLUB. CLOWN IS PERFORMING ON STAGE. (10:23-10:43) AUTO ENTERS ALLEY AND STOPS. TWO MEN AND ABDUCTED WOMAN GET OUT OF AUTO AND ENTER BUILDING. (10:47-11:18) ABDUCTED GIRL IS BROUGHT INTO ROOM WITH ANOTHER WOMAN WHO ORDERS THE TWO ABDUCTORS TO LEAVE. (11:22-11:29) SECOND WOMAN TALKS TO ABDUCTED VICTIM.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 3 OF 13 PARTS
(11:32-15:22) WOMAN CONTINUES TO CALM AND SOOTHE THE FEMALE VICTIM BY TALKING TO HER AND FONDLING HER. (15.26-17:03) CLOWN PERFORMING IN PANTOMIME AS AUDIENCE WATCHES.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 10, 1973).





"BEHIND THE GREEN DOOR"
PART 4 OF 13 PARTS
(17:07-18:24) SPOTLIGHT FOCUSES ON GREEN DOOR, WHICH OPENS. ABDUCTED GIRL IS LED OUT BY SEVERAL MEN IN ROBES TO CENTER STAGE. (18:24-22:14) GIRL IS DISROBED BY OTHER WOMEN AND FONDLED AND KISSED AS AUDIENCE WATCHES. (22:17-22:31) GIRL IS RESTRAINED BY SEVERAL WOMEN AS ANOTHER WOMAN PERFORMS CUNNILINGUS ON HER. (22:35-22:46) CAMERA SHIFTS FROM VICTIM TO AUDIENCE AND BACK SHOWING AUDIENCE REACTION.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 5 OF 13 PARTS
(22:40-26:35) AUDIENCE CONTINUES TO WATCH AS GIRL VICTIM IS HELD SPREAD EAGLED ON HER BACK ON STAGE FLOOR AS SEVERAL OTHER FEMALES KISS AND SUCK HER BREASTS AND ANOTHER FEMALE PERFORMS CUNNILINGUS ON HER. (26:39-28:20) BLACK MALE ENTERS STAGE WITH PENIS EXPOSED THROUGH PANTS WITH CUTOUT, AND APPROACHES RESTRAINED VICTIM ON FLOOR. OTHER WOMEN DIRECT MALE TO VICTIM'S VAGINA.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 6 OF 13 PARTS
(28:24-29:16) WOMEN HOLD VICTIM ON FLOOR AS MALE PERFORMS CUNNILINGUS ON HER AS AUDIENCE WATCHES.
(29:19-33:54) CLOSEUP OF MALE PENIS ENTERING VAGINA OF VICTIM. MALE PERFORMS SEXUAL INTERCOURSE WHILE FEMALE WRITHES ON FLOOR STILL HELD BY OTHER FEMALES.

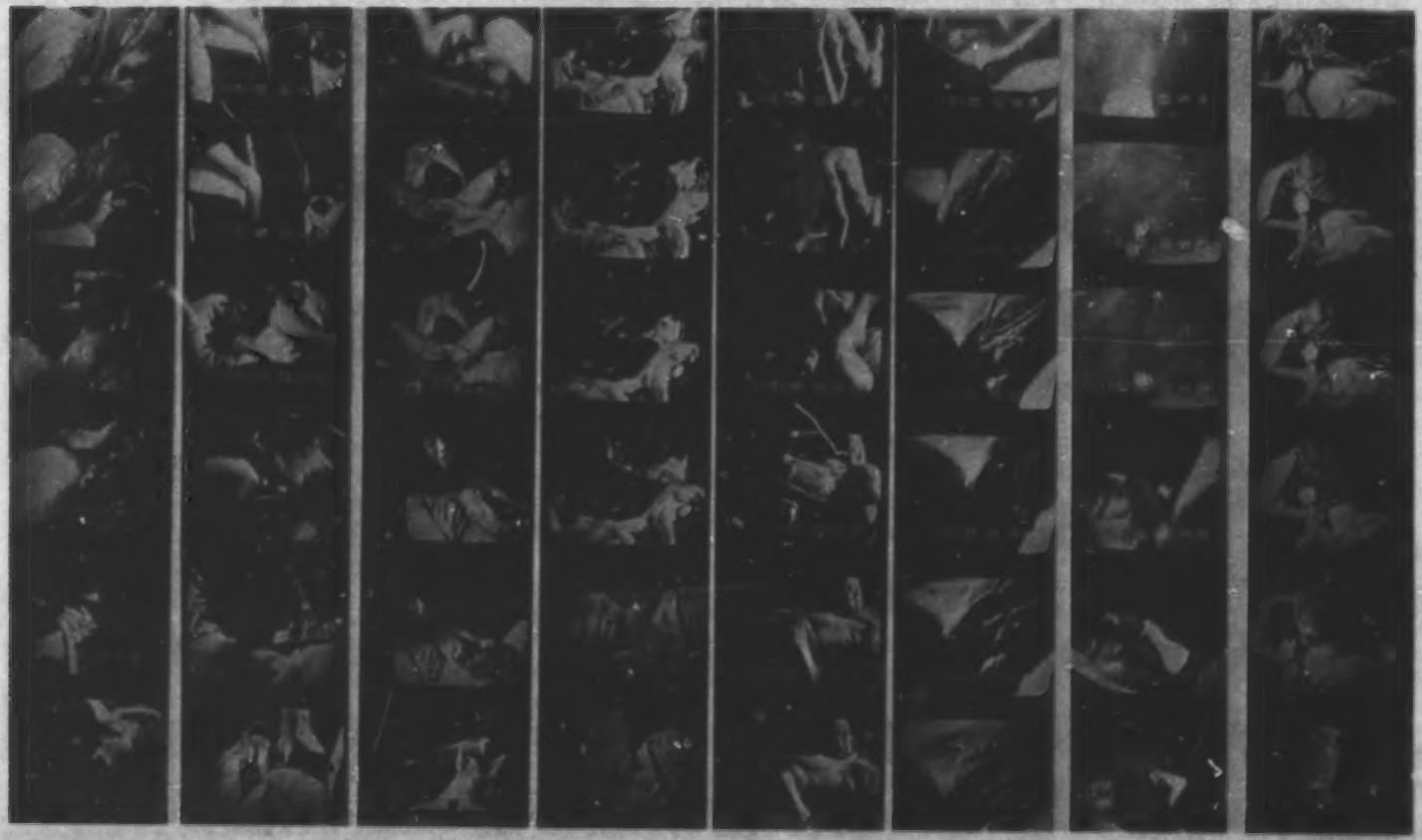
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

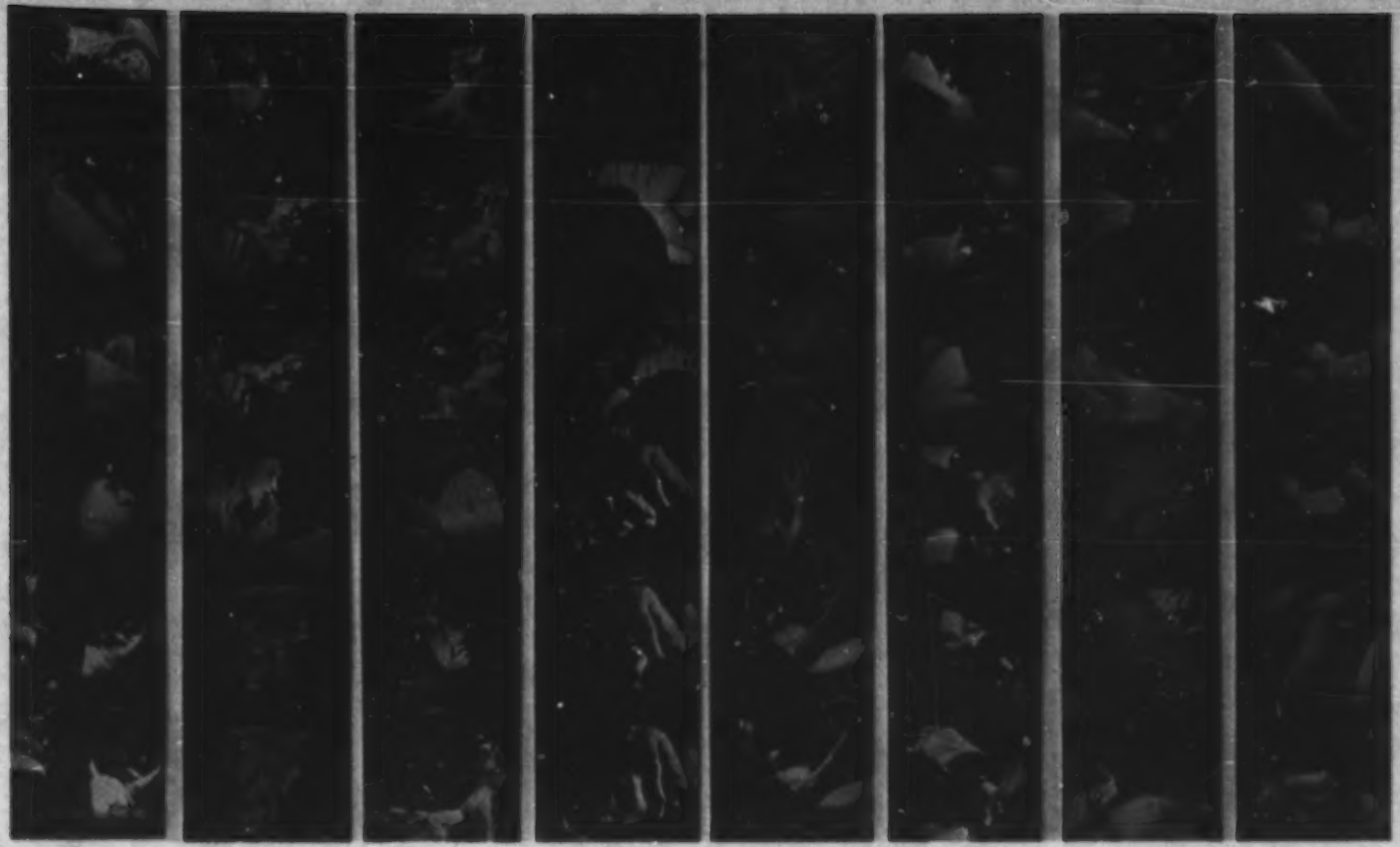
"BEHIND THE GREEN DOOR"
PART 7 OF 13 PARTS
(33:59-36:42) MALE PERFORMS SEXUAL INTERCOURSE TO RHYTHM OF BONGO DRUMS BRINGING VICTIM TO CLIMAX. (36:45-36:56) CAMERA SHOWS AUDIENCE REACTION -- ONE WOMAN MASTURBATES. (36:59-37:44) BLACK MALE EXITS STAGE. AUDIENCE ANTICIPATES NEXT ACT. (37:48-39:22) THREE MAN TRAPEZE DEVICE IS LOWERED FROM CEILING. THREE MEN MOUNT IT WITH PENISES EXPOSED. (39:29) CLOSEUP OF A WOMAN IN AUDIENCE MASTURBATING WITH HER FINGERS WHILE VIEWING STAGE ACTIVITY.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).

"BEHIND THE GREEN DOOR"
PART 8 OF 13 PARTS
(39:53-41:45) VICTIM IS TAKEN TO CENTER OF TRAPEZE WITH THREE MALES. SHE THEN MASTURBATES TWO MALES WHILE ALSO PERFORMING FELLATIO ON THIRD MALE. (41:48-41:59) ANOTHER FEMALE IN AUDIENCE FONDLES HER OWN BREAST AS SHE VIEWS STAGE. (42:02-45:03) VICTIM CONTINUES TO MASTURBATE TWO MALES WHILE PERFORMING FELLATIO ON THIRD MALE. WHILE FOURTH MALE PERFORMS SEXUAL INTERCOURSE ON HER FROM BENEATH HER. AUDIENCE ENGAGES IN SEXUAL ACTIVITY.

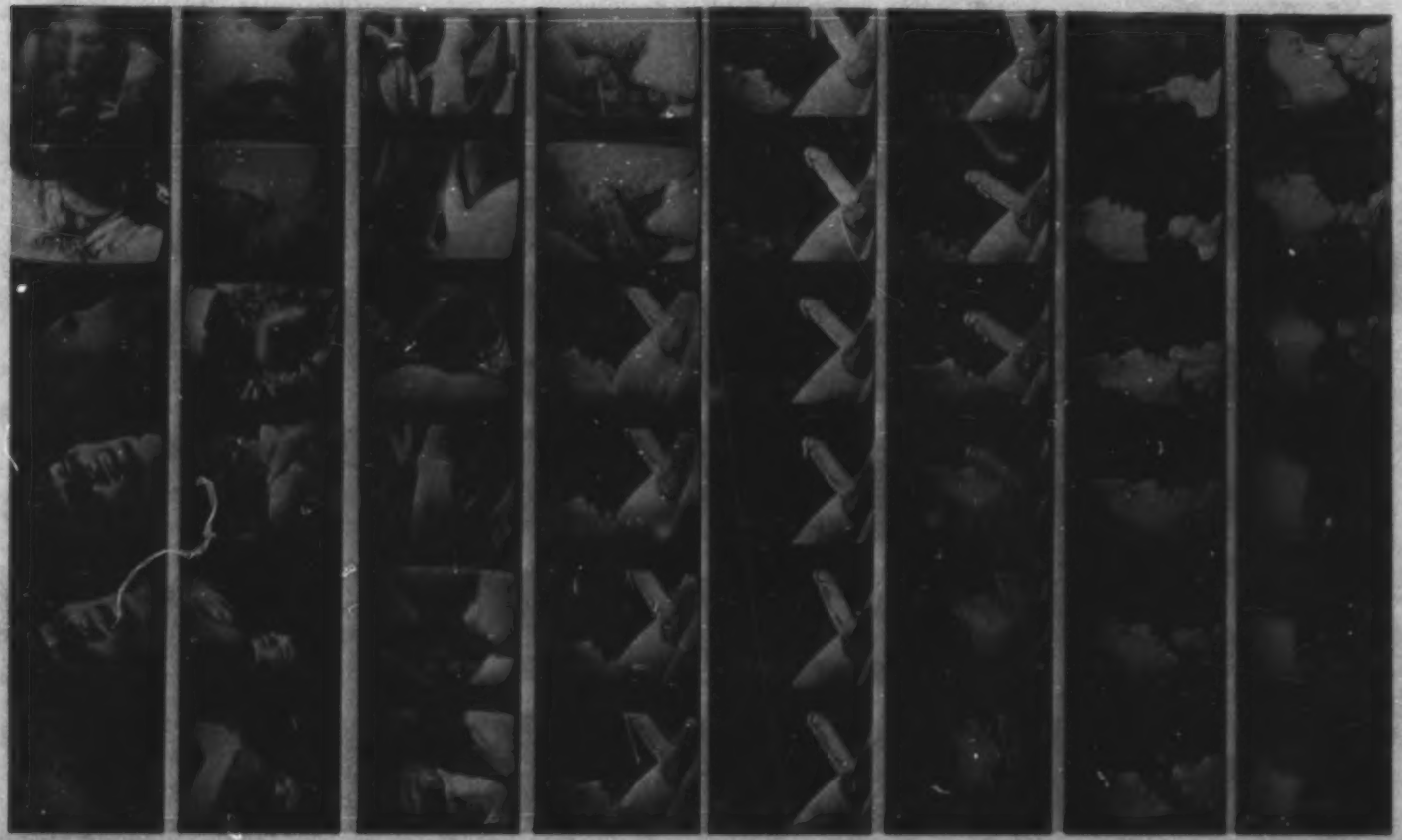
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).





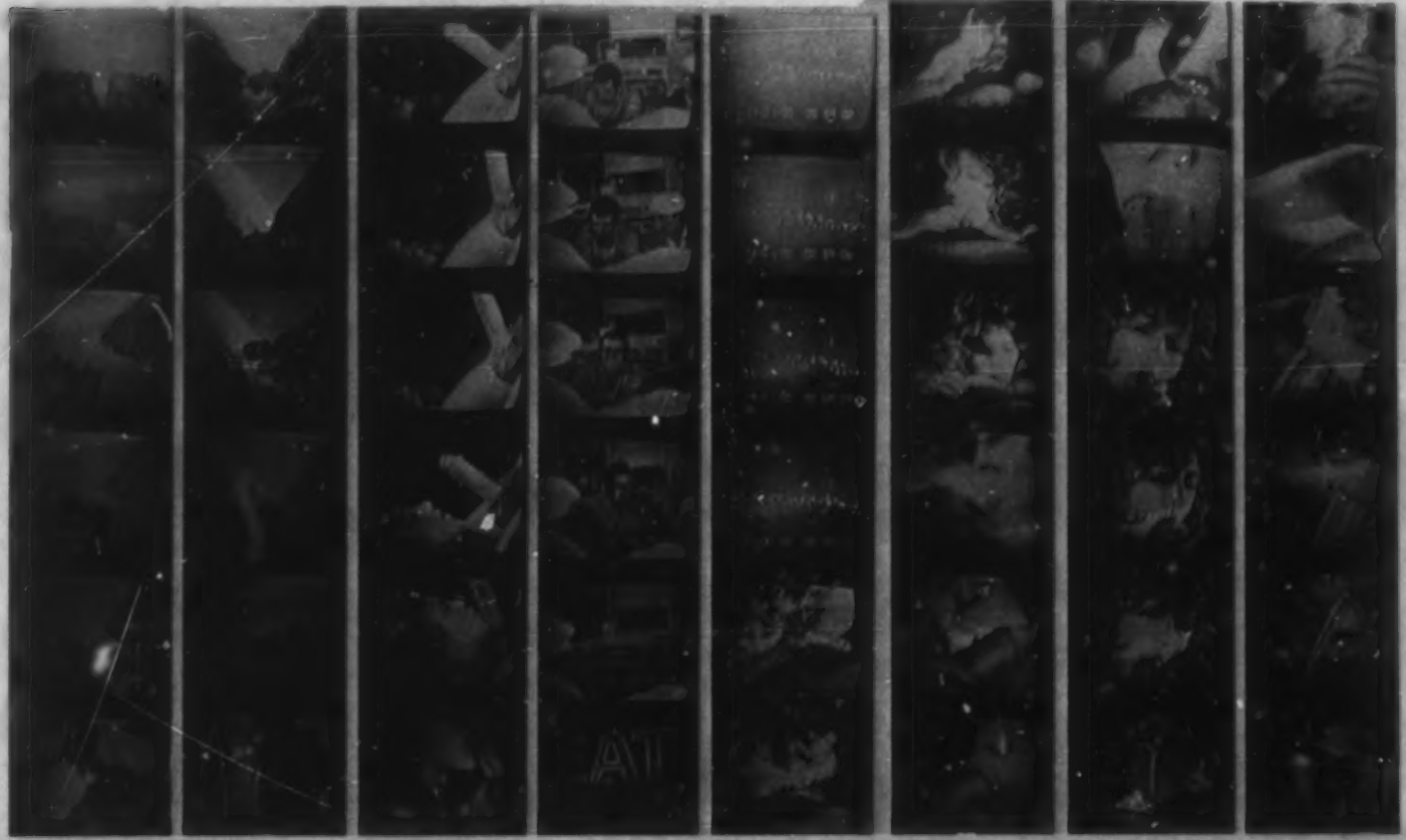
"BEHIND THE GREEN DOOR"
PART 9 OF 13 PARTS
(45:07-47:50) SEXUAL INTERCOURSE - CUNNILINGUS. (47:54-50:38) AUDIENCE ENGAGES IN SEXUAL ACTIVITY. MASTURBATION, CUNNILINGUS, FELLATIO, GROUP ORGY.

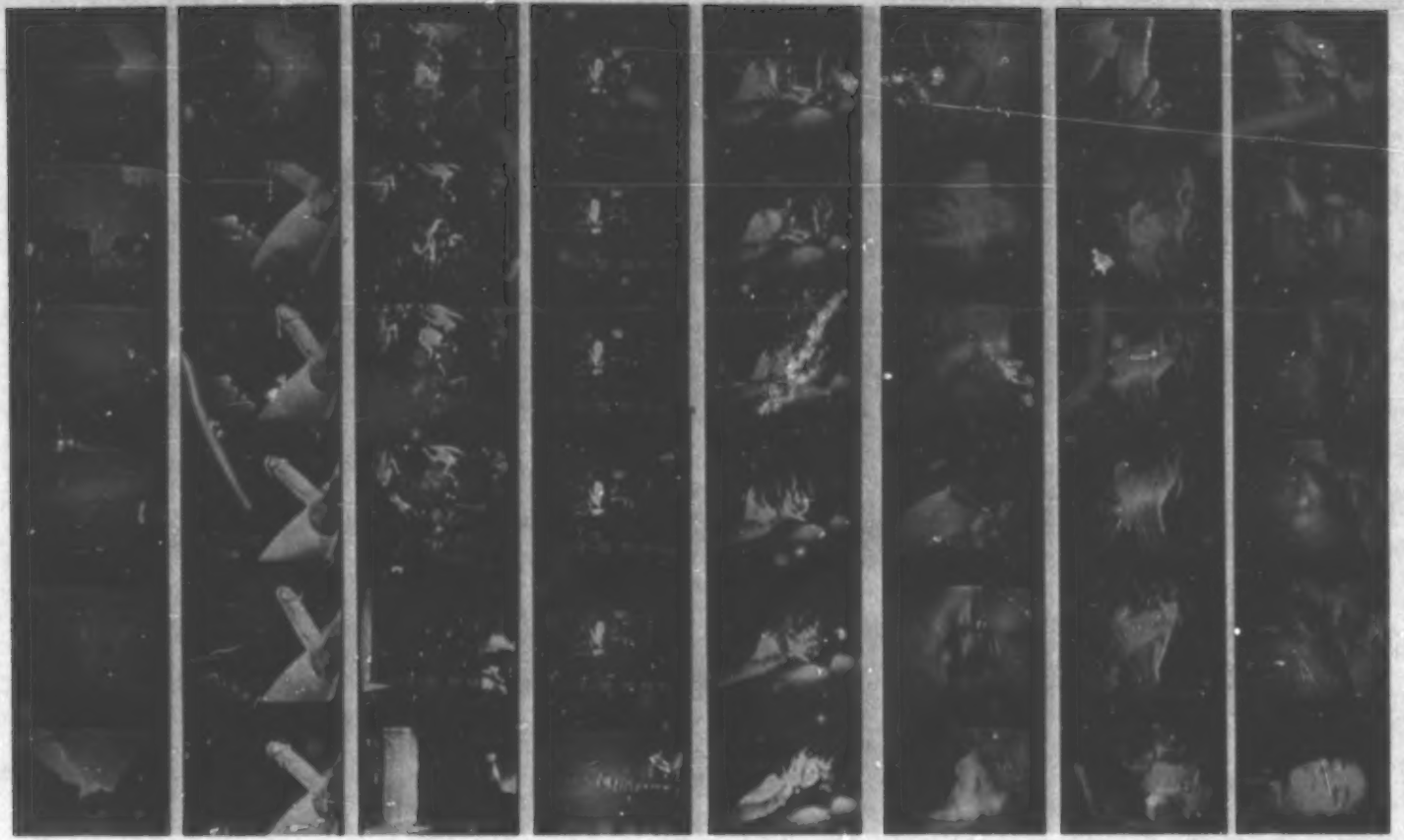
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



"BEHIND THE GREEN DOOR"
PART 10 OF 13 PARTS
(50:41-51:02) BLACK MALE PERFORMS SEXUAL INTERCOURSE ON GIRL VICTIM THEN MASTURBATES HER VAGINA. (51:05-52:05) FELLATIO, CUNNILINGUS, SEX ORGY CONTINUES. (52:08-52:50) CLOSEUP OF SEXUAL INTERCOURSE, PENIS EJACULATES ON FEMALE PUBIC HAIR. (52:54-56:12) FEMALE PLACES FACE BENEATH PENIS AS IT EJACULATES. SEMEN DRIPS ON FEMALE VICTIM'S MOUTH AND THROAT. SHE THEN LICKS SEMEN FROM BLACK PENIS. MALE THEN RUBS SEMEN FROM PENIS ON FEMALE'S NOSE AND MOUTH.

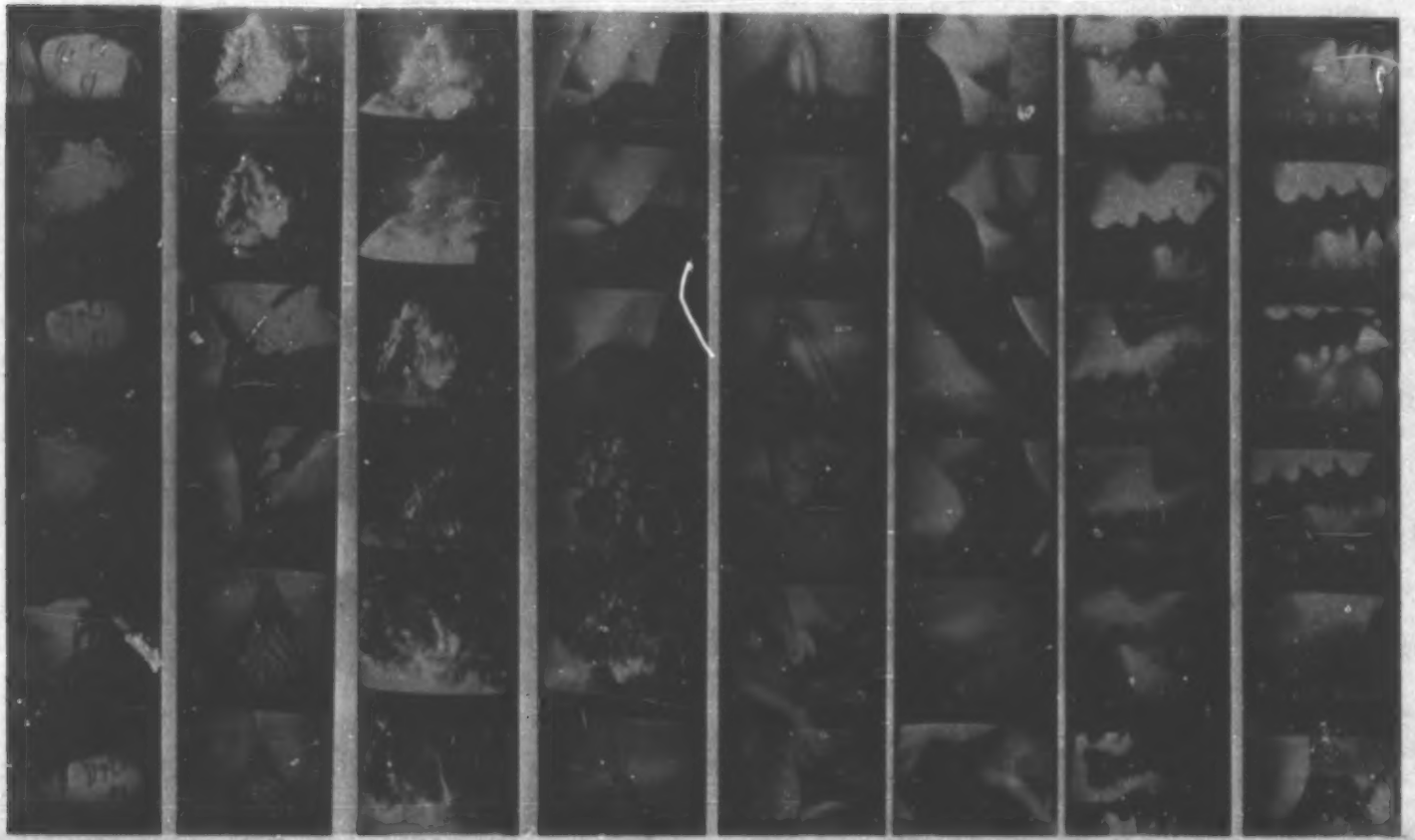
"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).





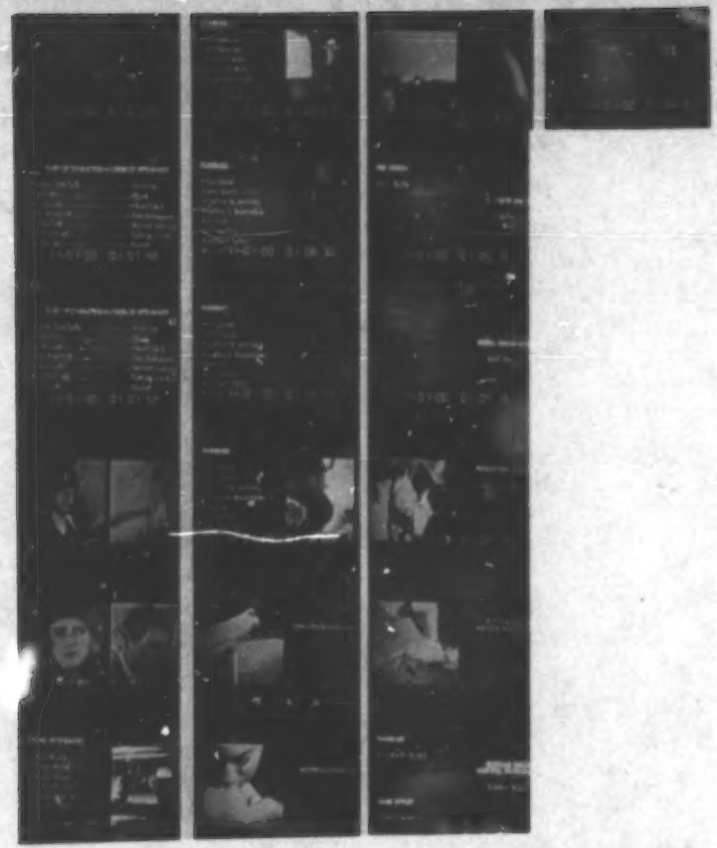
"BEHIND THE GREEN DOOR"
PART 11 OF 13 PARTS
(56:15-57:56) SPECIAL EFFECTS PHOTOGRAPHY - PENIS EJACULATES AND SEMEN POURS INTO FEMALE'S MOUTH, FEMALE PERFORMS ORAL SODOMY ON BLACK PENIS AND LICKS SEMEN OFF. (58:00-58:17) ORGY CONTINUES AND THEN VICTIM IS CARRIED OFF STAGE. (58:20-59:13) STORY RETURNS TO TWO MEN AT DINER RECOUNTING STORY. (59:16-101:22) CLOSEUP OF FEMALE PERFORMING FELLATIO. (101:25-101:46) CUNNILINGUS.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



"BEHIND THE GREEN DOOR"
PART 12 OF 13 PARTS
(1:01:50-1:02:26) CLOSEUP OF MALE PERFORMING CUNNILINGUS ON VAGINA. (1:02:28-1:07:20) FEMALE MOUNTS MALE IN SEXUAL INTERCOURSE, CLOSEUP OF PENETRATION. MALE THEN MOUNTS FEMALE IN SEXUAL INTERCOURSE.

"BEHIND THE GREEN DOOR": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24594) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO JARTECH, INC. (DATE OF ISSUANCE: APRIL 18, 1973).



"BEHIND THE GREEN DOOR"
PART 13 OF 13 PARTS
(B07:24-B09:50) MALE AND FEMALE IN SEXUAL INTERCOURSE TO END - MALE SUPERIOR.

APPENDIX D

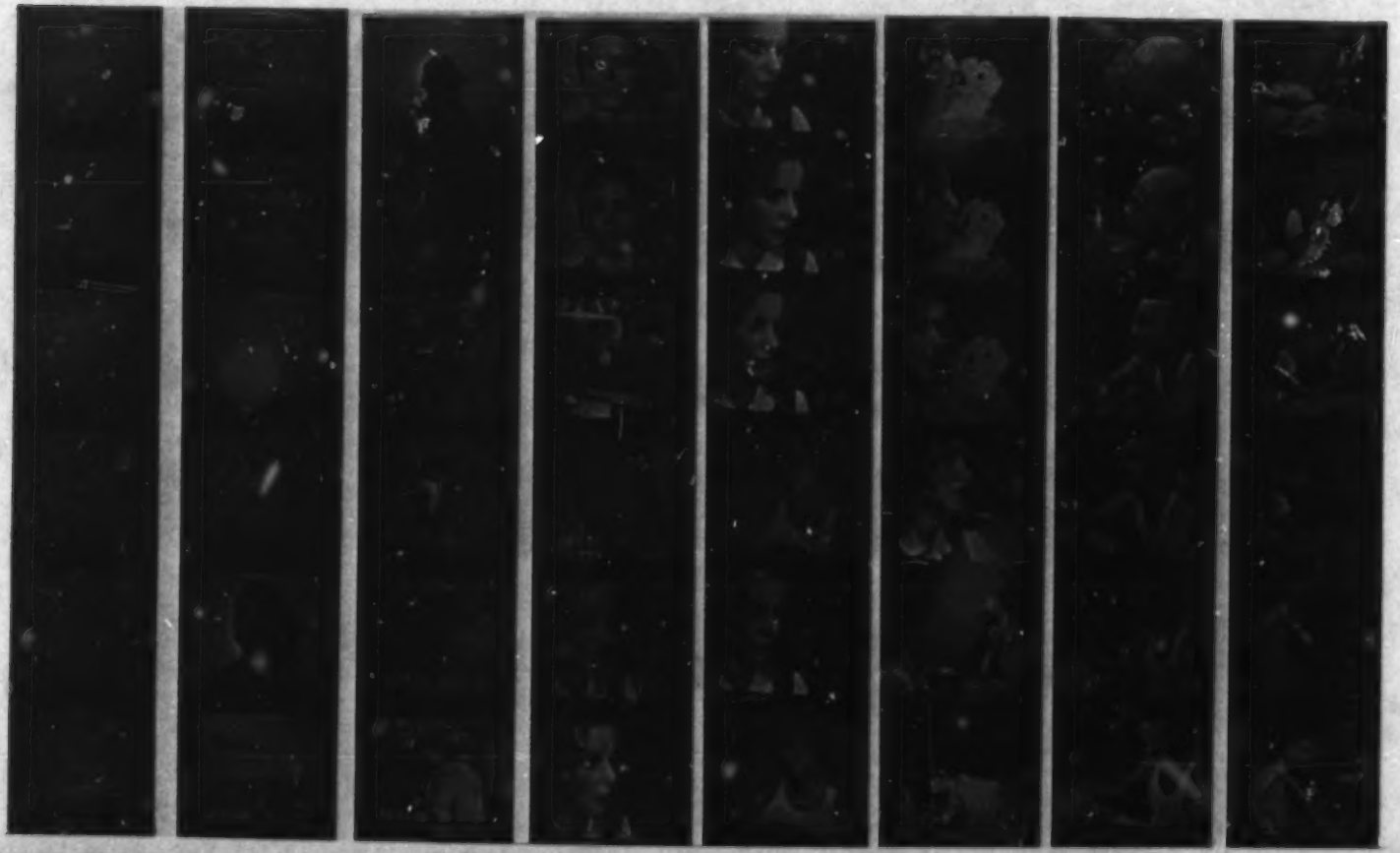
TIME-MOTION STUDY* OF THE FILM

"RESURRECTION OF EVE"

The motion picture film "Resurrection of Eve" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 10, 1973.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



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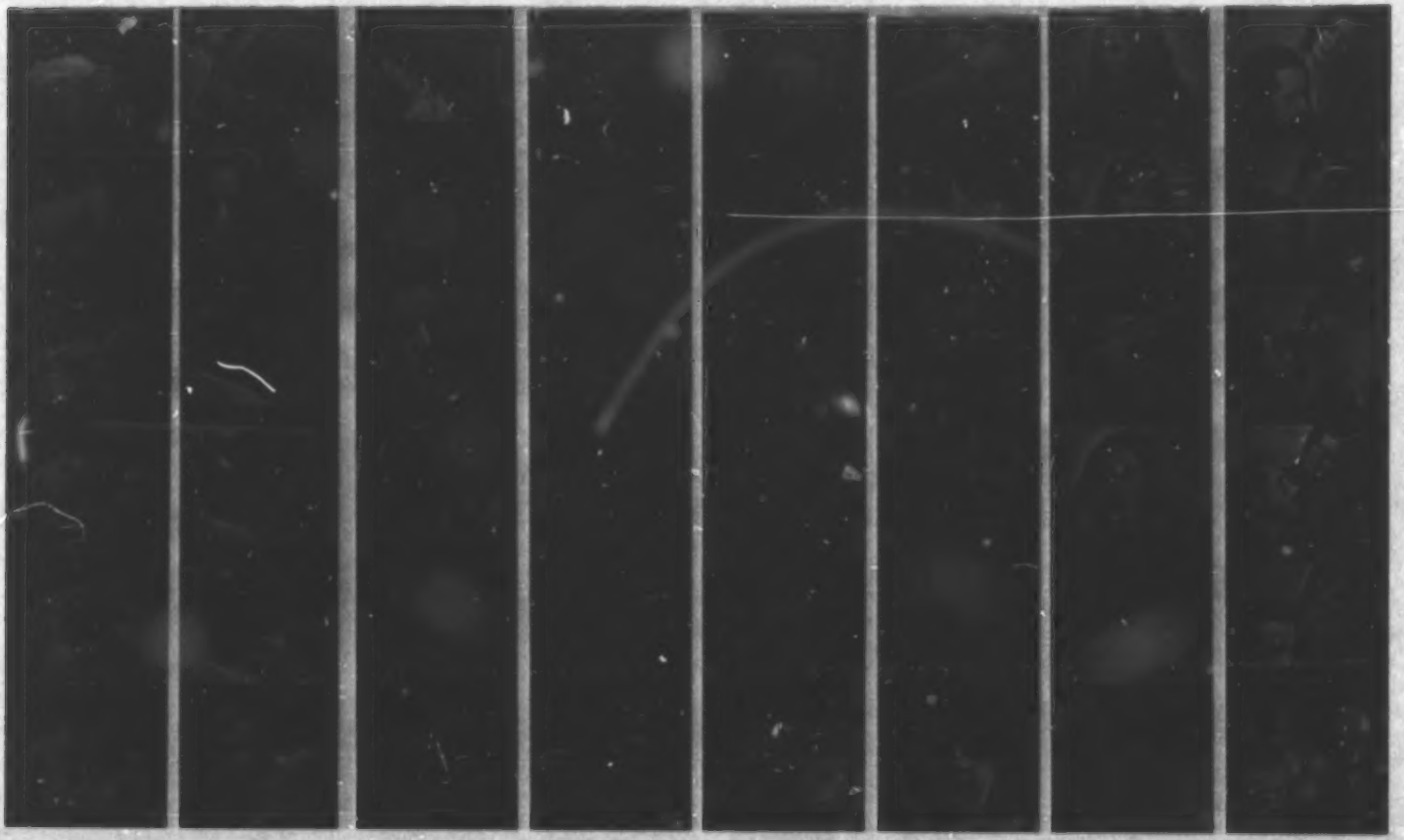
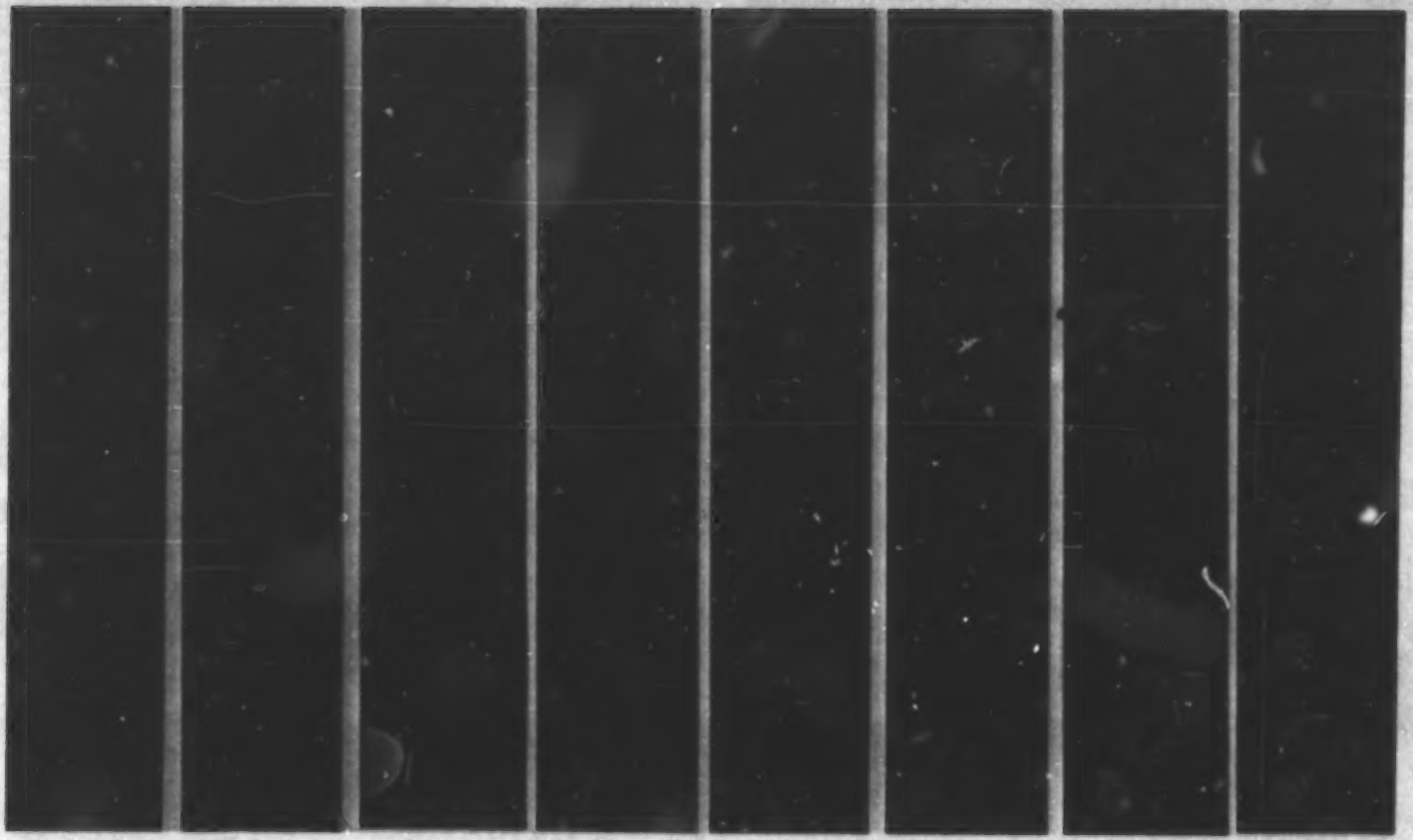
"RESURRECTION OF EVE"
PART 1 OF 15 PARTS
(00:07-00:35) CREDIT AND TITLE. (00:39-01:00) PRODUCER'S PREFACE TO STORY. (01:09-01:35) GIRL AT SEASHORE FACES HORIZON. (01:38-01:49) SAILOR AND GIRL APPEAR. (01:53-02:13) WOMAN AT SEASHORE STILL LOOKING OUT TO SEA. (02:20-03:54) SAILOR TALKS TO YOUNG GIRL IN APARTMENT. TEACHES HER TO KISS WITH HER TONGUE BY USING RAGGEDY ANN DOLL. (03:58-04:36) SAILOR THEN KISSES GIRL. (04:40-04:57) SAILOR SHOWS GIRL ACT OF CUNNILINGUS ON RAGGEDY ANN DOLL. (05:00-05:39) SAILOR LAYS GIRL BACK ON TABLE AND PERFORMS CUNNILINGUS ON HER.

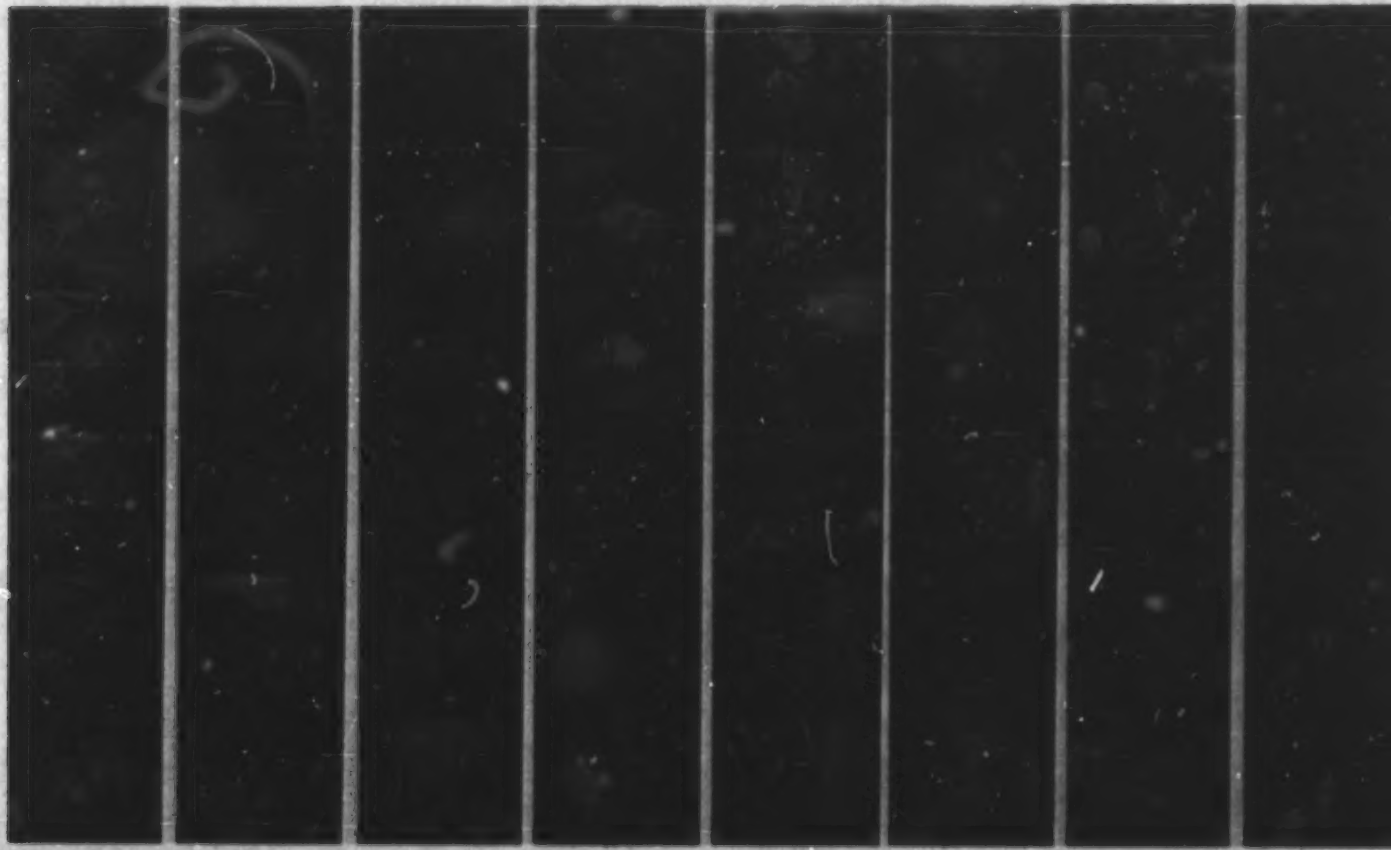
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

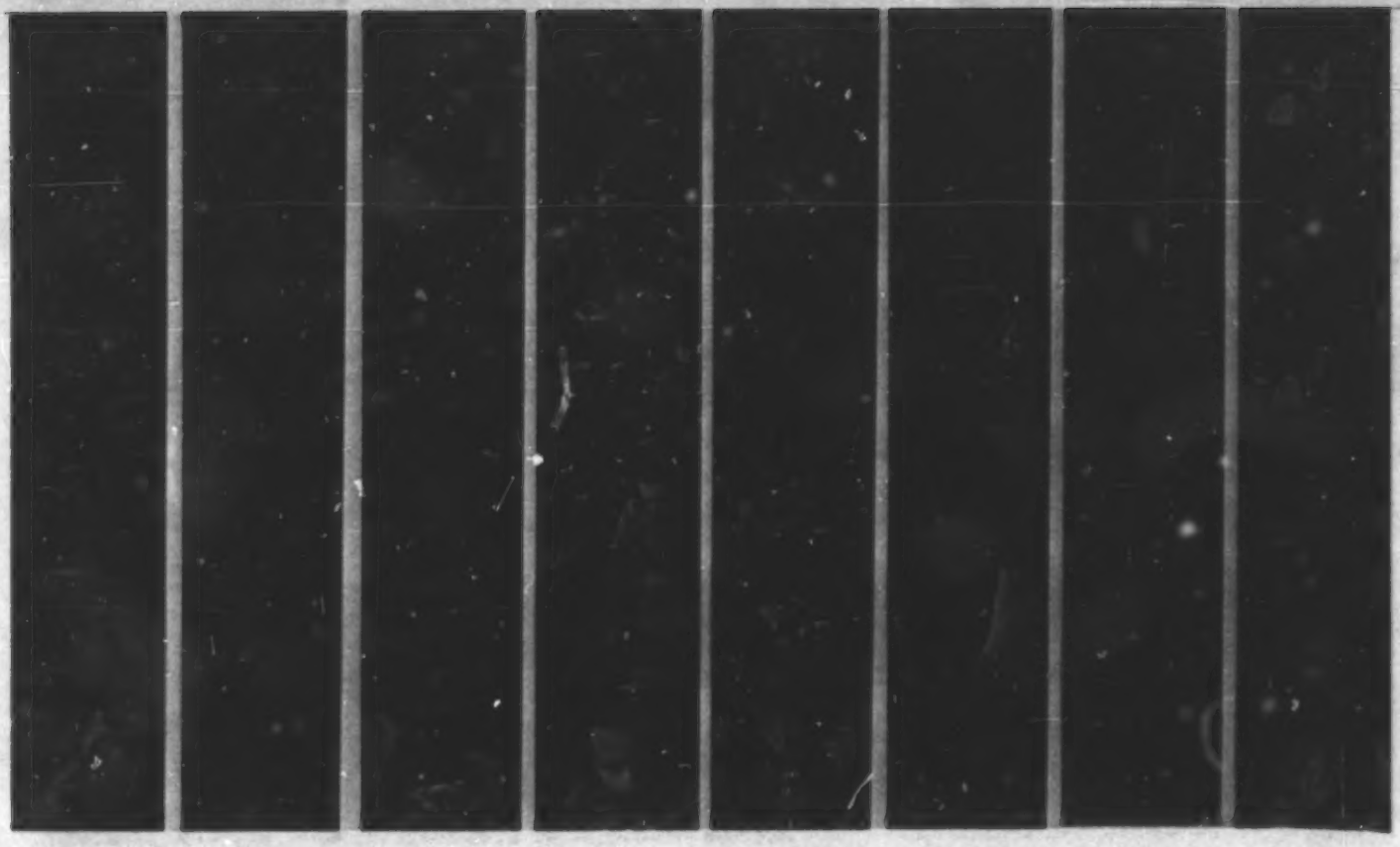




"RESURRECTION OF EVE"
PART 2 OF 15 PARTS
(05:42-06:59) CUNNILINGUS CONTINUES. (07:03-08:16) SAILOR HAS GIRL PERFORM FELLATIO ON HIM. (08:19-08:40) GIRL'S MOTHER APPEARS THROWS SAILOR OUT. (08:44-08:58) FLASHBACK TO WOMAN AT BEACH REMEMBERING. (09:01-09:08) HOSPITAL SCENE. (09:12-09:33) GYM SCENE BLACK FIGHTER AND MANAGER. MALE AND FEMALE AT TABLE. (09:36-11:00) MALE AND FEMALE CONVERSE AT TABLE. (11:03-11:14) FEMALE PERFORMS FELLATIO ON MALE.

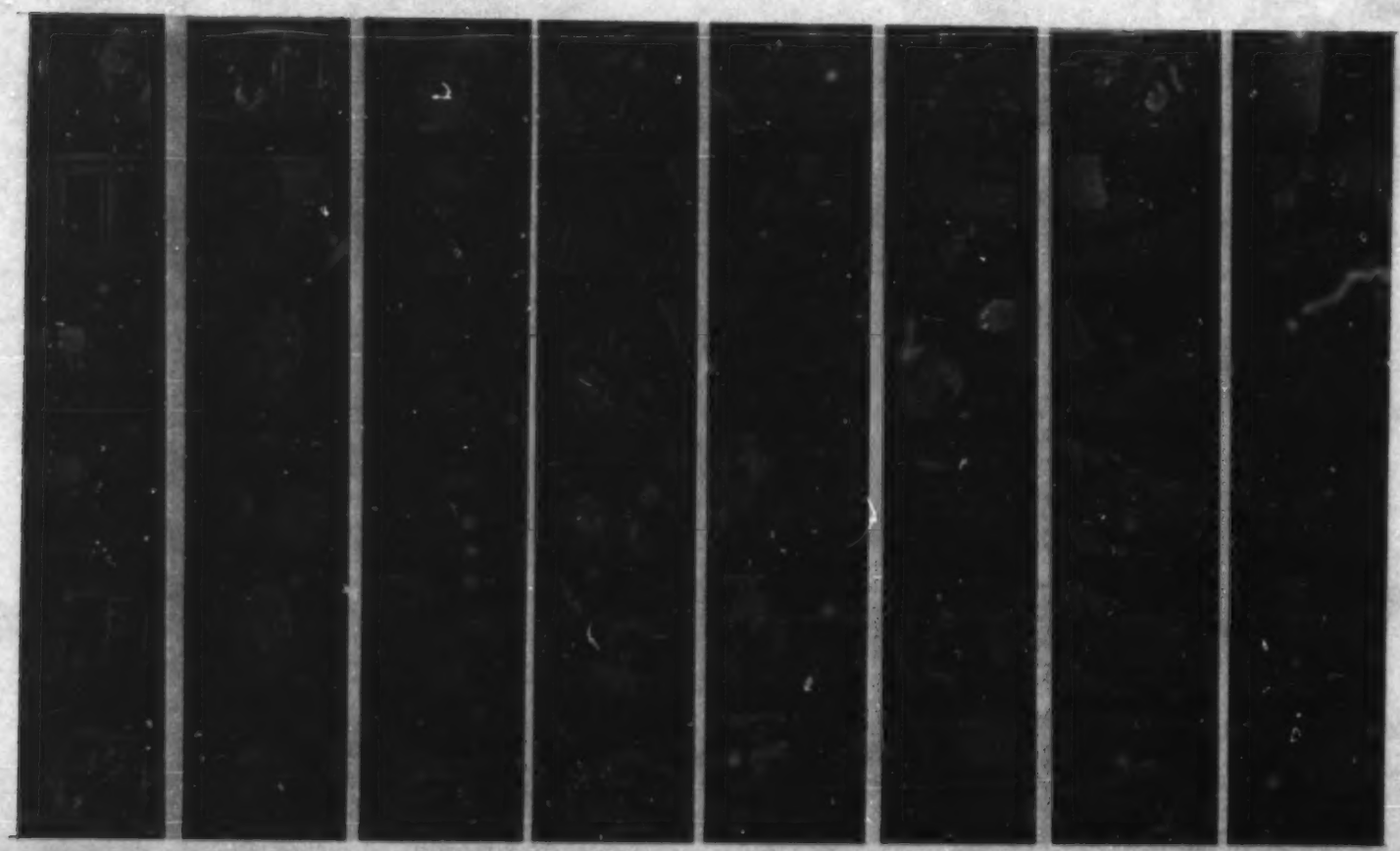
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

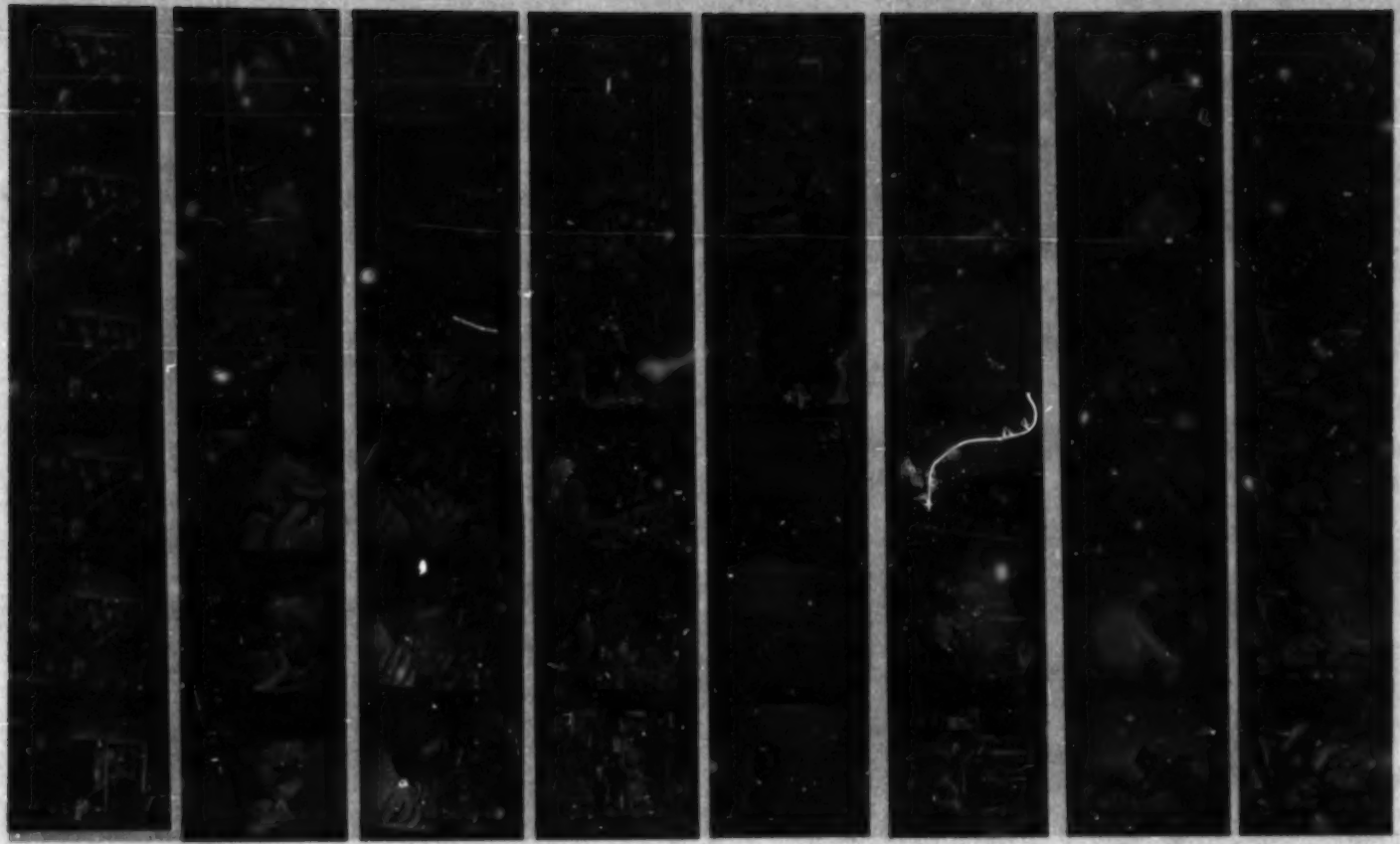




"RESURRECTION OF EVE"
PART 3 OF 15 PARTS
(11:17-12:10) FELLATIO CONTINUES. (12:13-13:33) SEXUAL INTERCOURSE, MALE SUPERIOR. (13:37-14:08) MALE PERFORMS AS DISC JOCKEY ON RADIO. (14:12-14:22) HOSPITAL SCENE; (14:26-14:47) FLASHBACK EVE TALKS TO BLACK FIGHTER (14:50-15:14) FLASHBACK, EVE TALKS TO DISC JOCKEY. (15:18-15:21) HOSPITAL FLASHBACK (15:25-15:49) DISC JOCKEY TELLS GIRLFRIEND THEY ARE THROUGH. (15:53-16:21) HOSPITAL FLASHBACK. (16:24-16:49) MALE ANNOYS FEMALE WHO IS WORKING AT RADIO.

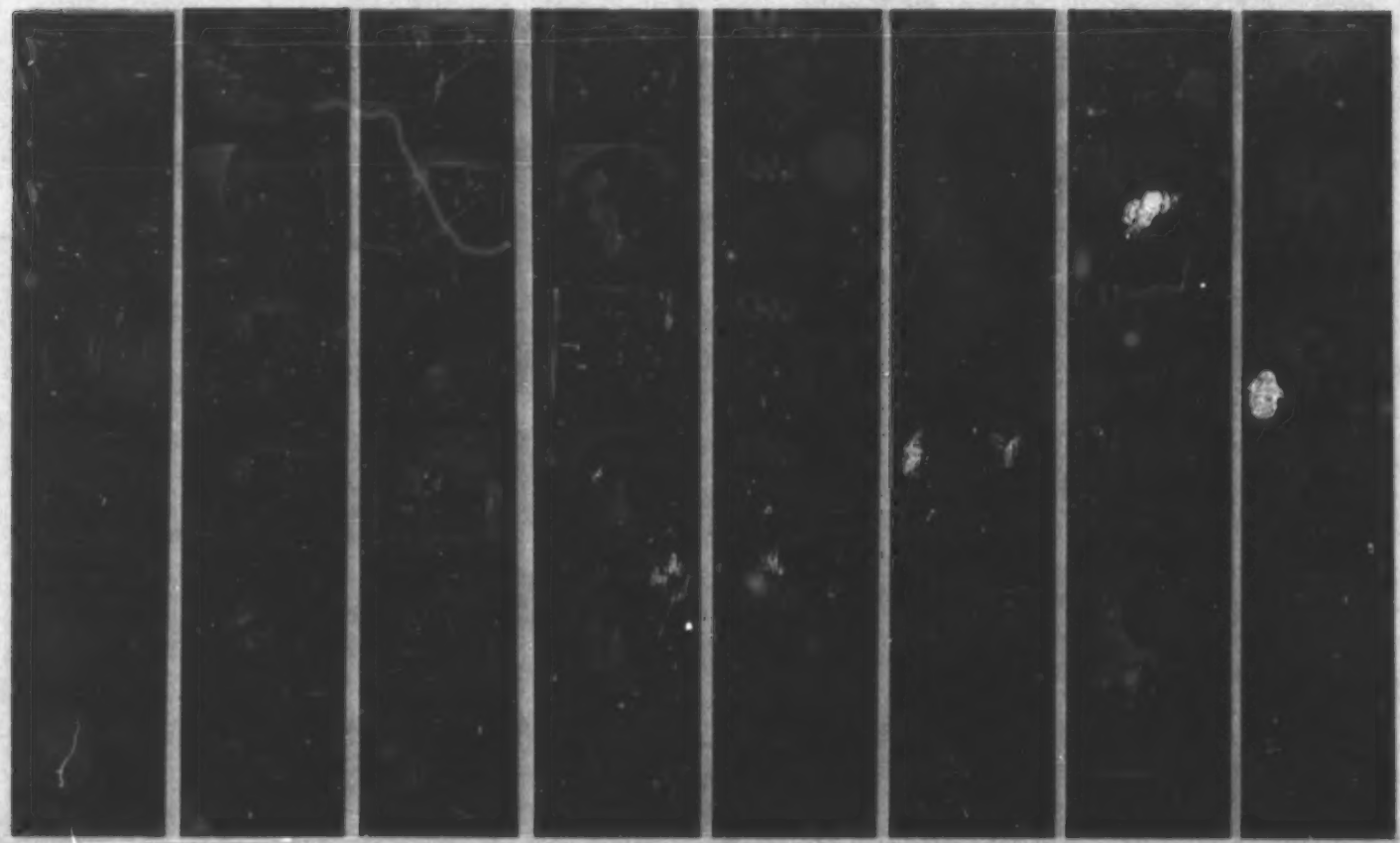
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).





"RESURRECTION OF EVE"
PART 4 OF 15 PARTS
(16:52-17:37) DISC JOCKEY ANNOYS FEMALE WORKING AT RADIO STATION. (17:41-19:22) SEXUAL INTERCOURSE. (19:26-19:36) OUTDOOR SCENE. (19:45-19:47) SEXUAL INTERCOURSE. (19:50-19:57) EVE AND FRANK TALK. (20:00) BLACK FIGHTER SKIPS ROPE. (20:04-20:07) HOSPITAL SCENE EVE'S FACE GROTESQUE AND SCARRED. (20:11-20:18) OUTDOOR BEACH SCENE. (20:25-20:39) FRANK AND EVE TALK AND EMBRACE. (20:42-20:46) SEXUAL ACTIVITY. (20:49-21:03) OUTDOOR PARK SCENE. (21:07-21:35) CLOSEUP OF MALE FACE BETWEEN FEMALE'S LEGS PERFORMING CUNNILINGUS. (21:38-21:42) EVE IN HOSPITAL WITH NURSE. (21:45-21:49) GYM SCENE FIGHTER WORKING OUT. (21:59-22:24) SEXUAL INTERCOURSE MALE SUPERIOR.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO AHATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



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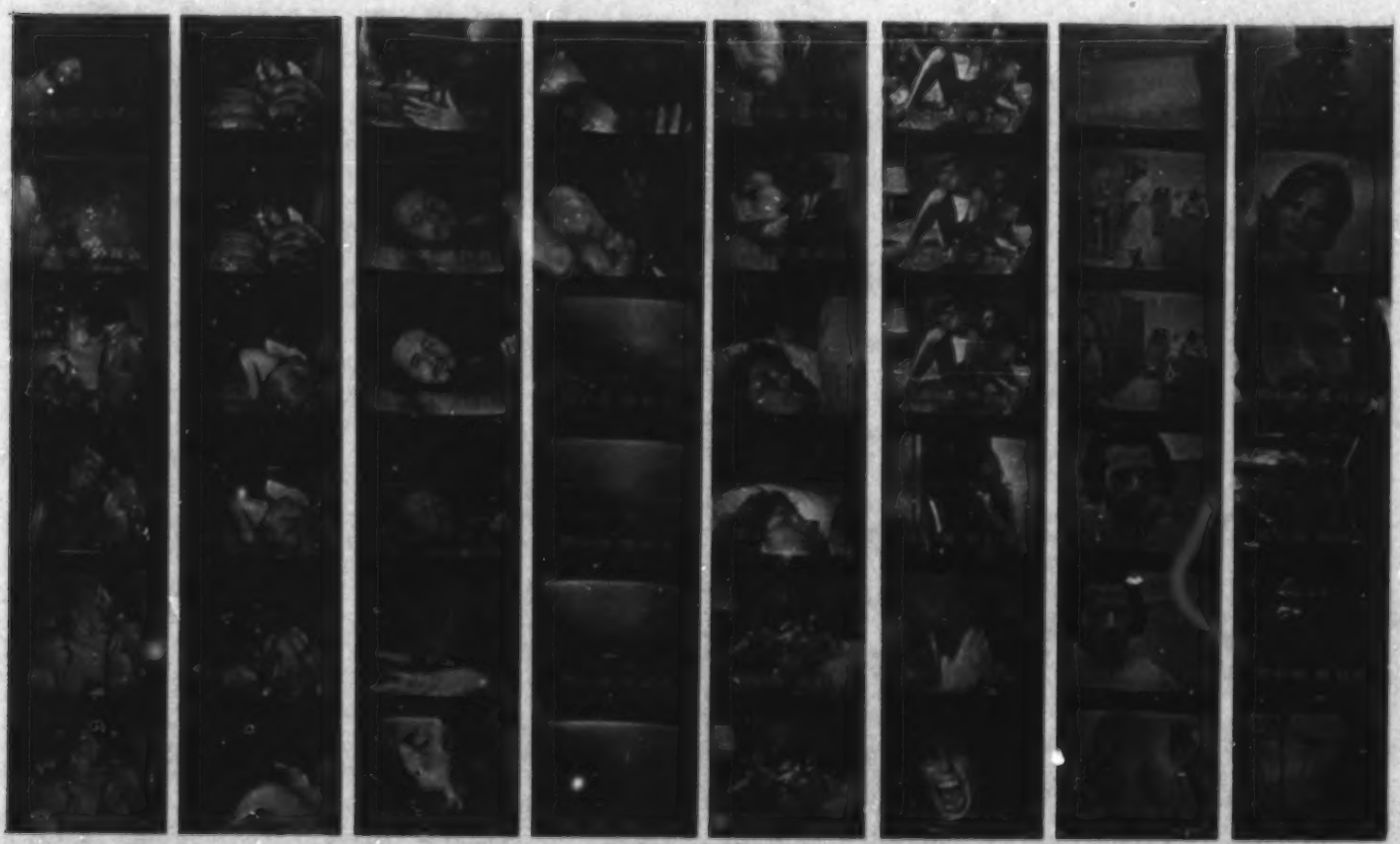
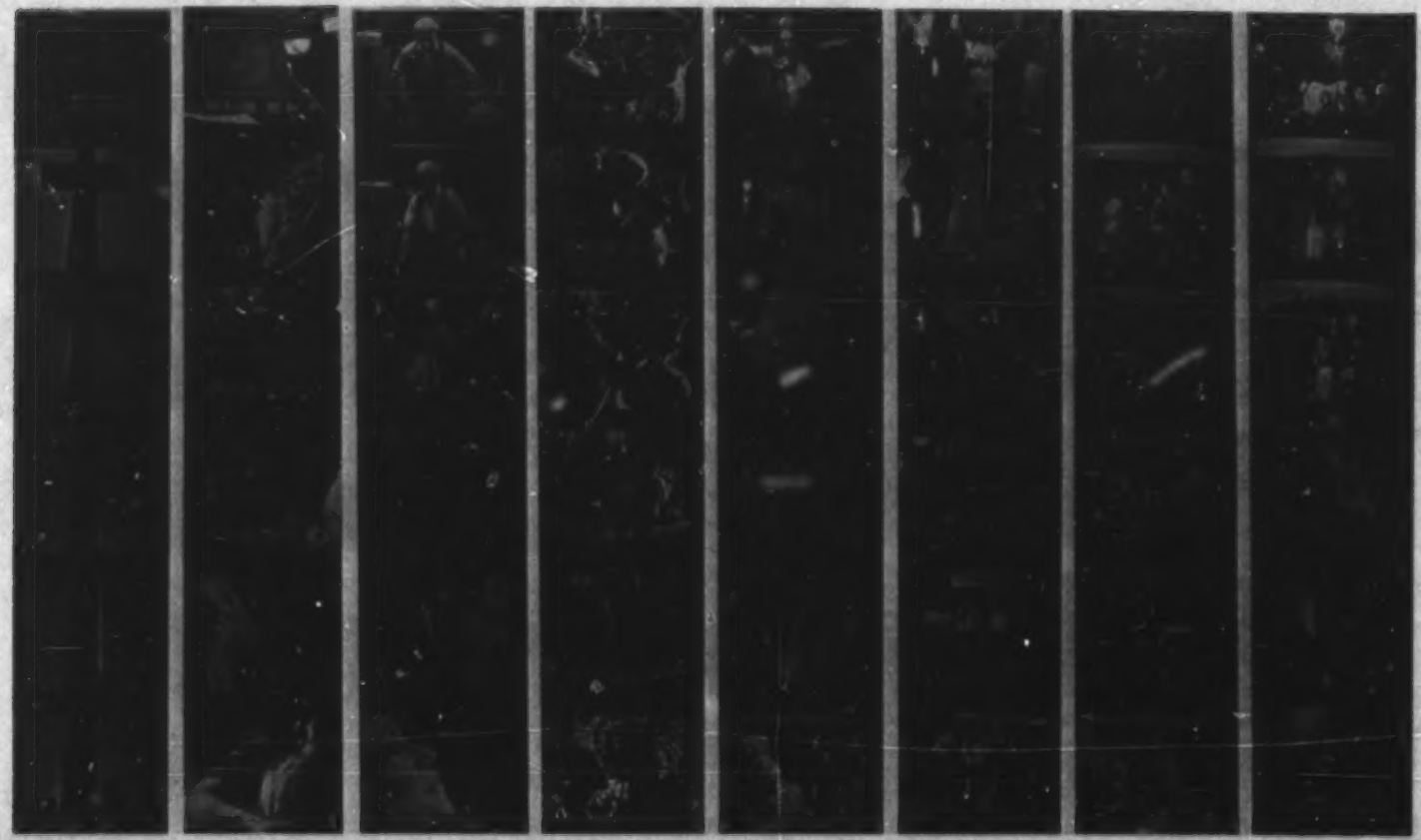


"RESURRECTION OF EVE"
PART 6 OF 15 PARTS
(28:02-28:06) SHADOW BOXING. (28:09-28:27) FRANK AND EVE TALK. (28:30-28:41) FRANK AND EVE HAVE SEXUAL INTERCOURSE. (28:44-29:57) EVE PERFORMS FELLATIO ON FRANK. (30:04-30:29) SEXUAL INTERCOURSE WITH BLACK FIGHTER (30:32-30:53) SEXUAL INTERCOURSE WITH FRANK, (30:57-31:46) EVE IS NOT SATISFIED. (31:49) EVE SCREAMS. (31:53-32:21) FLASHBACK TO EVE IN HOSPITAL. (32:23-33:13) FRANK VISITS EVE IN HOSPITAL RECOVERING FROM PLASTIC SURGERY. (33:13-33:34) CLOSEUP OF EVE RECOUPERATING.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

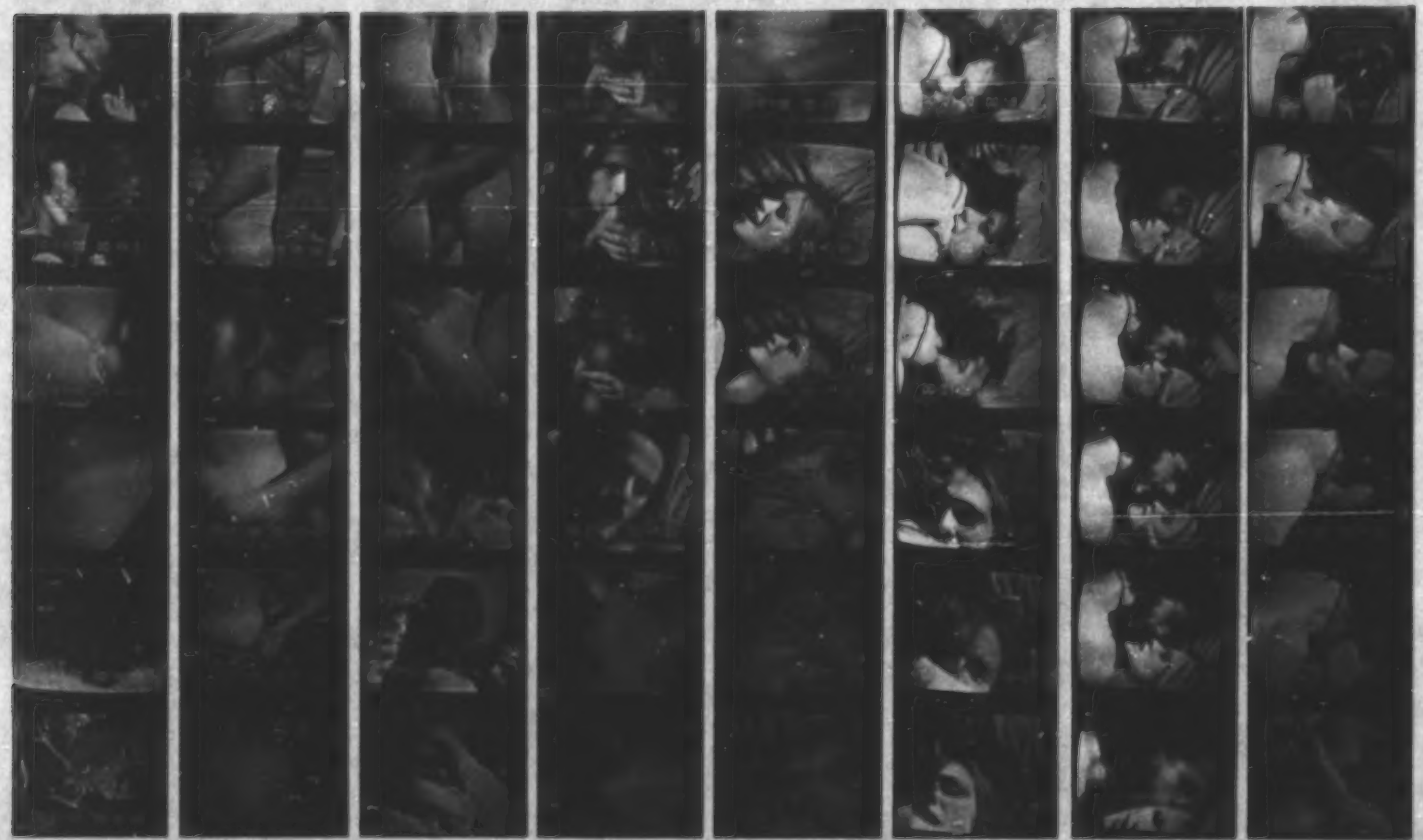


"RESURRECTION OF EVE"
PART 7 OF 15 PARTS
(33:37-39:09) FRANK AND EVE GET MARRIED - MUSICAL GROUP AND DANCERS PERFORM AT CEREMONY. BLACK MUSICAL GROUP PERFORMS FOLLOWED BY MALE SINGER.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

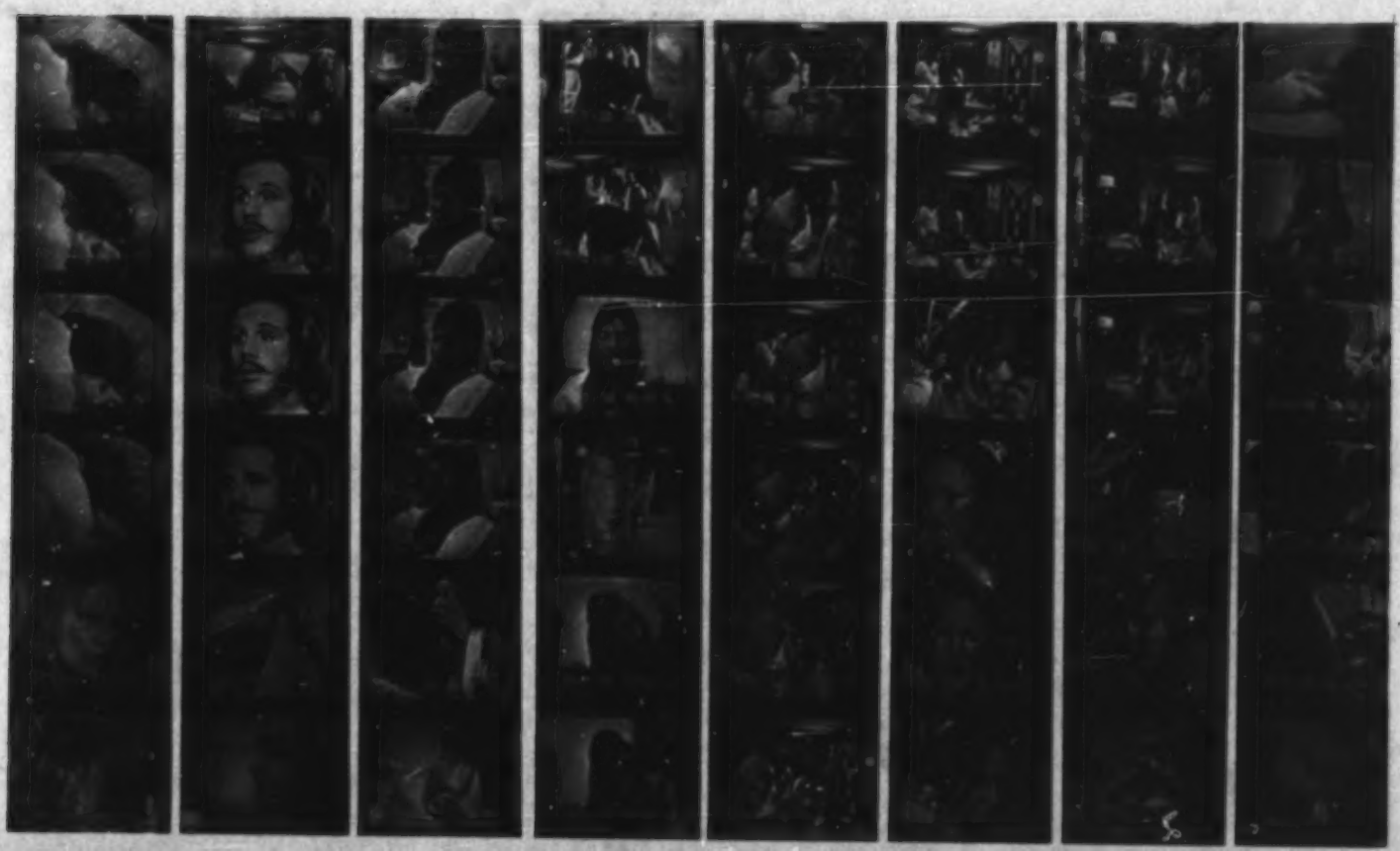
"RESURRECTION OF EVE"
PART 8 OF 15 PARTS
(39:13-39:37) WEDDING CELEBRATION CONTINUES. (39:40-40:43) FRANK PERFORMS AS DISC JOCKEY. (40:47-41:08) FRANK AT POOLSIDE. (41:11-42:35) FRANK AND EVE EMBRACE AND KISS IN BED. (42:39-42:53) EVE VACUUMS APARTMENT. (42:56-44:44) FRANK AND EVE EMBRACE. THEY STRIP AND KISS.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO AHATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 9 OF 15 PARTS
(44:48-46:22) FRANK AND EVE CONTINUE TO STRIP. (46:26-47:18) IN BED. EVE PERFORMS FELLATIO ON FRANK.
(47:25-50:20) FRANK MOUNTS EVE IN SEXUAL INTERCOURSE.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO AHATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 10 OF 15 PARTS
(50:23-50:33) INTERCOURSE CONTINUES. (50:37-51:15) EVE IS PERSUADED TO JOIN IN GROUP SEX. (51:18-55:55) MALES AND FEMALES GATHER FOR SEXUAL ACTIVITY - MEMBERS ARE PARTIALLY DRESSED - THEN DISROBE AND ENGAGE IN VARIOUS SEXUAL ACTS IN SEXUAL ORGY

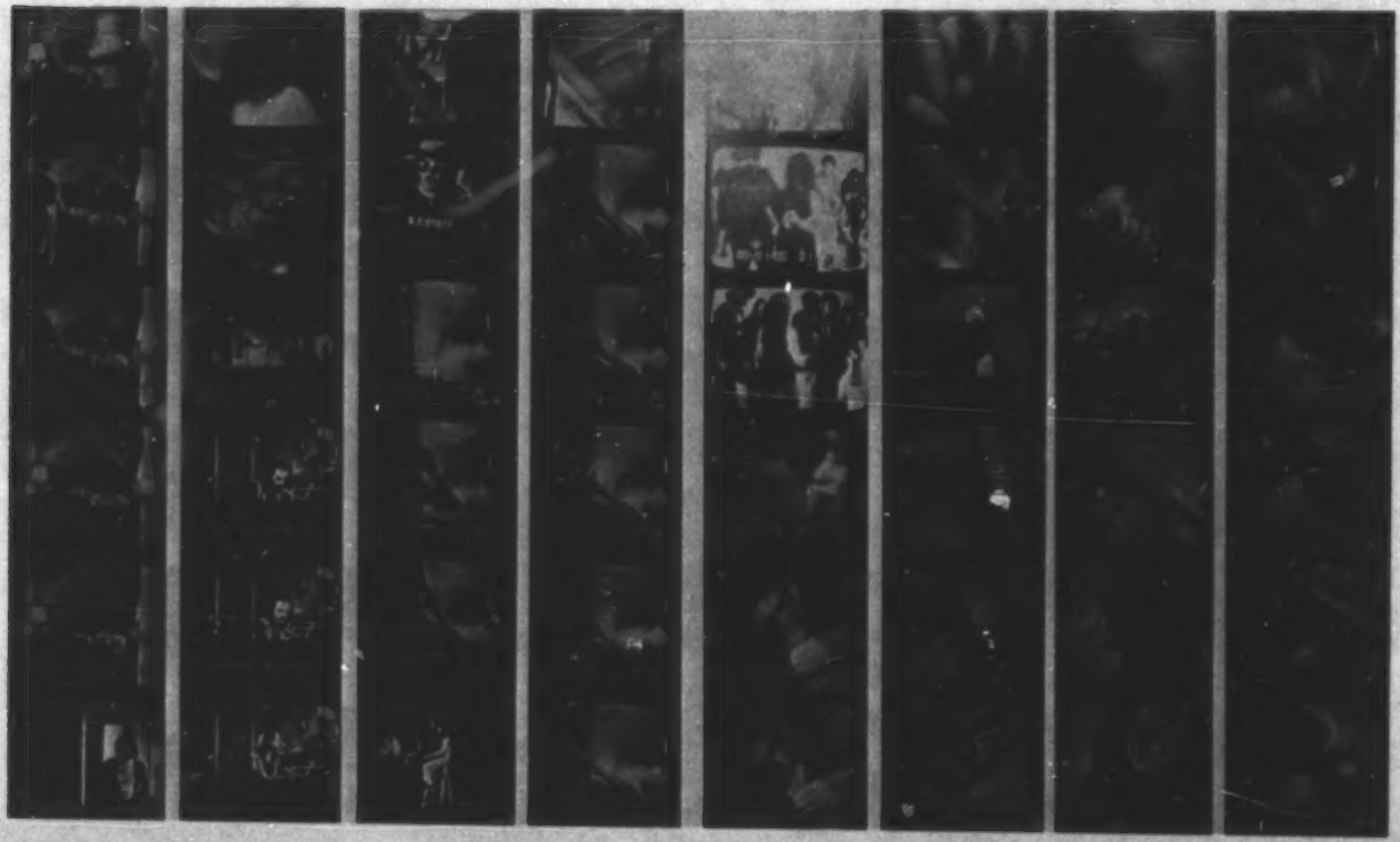
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

"RESURRECTION OF EVE"
PART 11 OF 15 PARTS
(55:59-56:33) SEX ORGY CONTINUES. FELLATIO BY FEMALE ON MALE. MASTURBATION, CUNNILINGUS, SEXUAL INTERCOURSE. (57:01) EVE SEES FRANK HAVE INTERCOURSE WITH ANOTHER FEMALE. (57:36-59:31) EVE AND FRANK QUARREL. EVE APOLOGIZES. (59:35-61:30) EVEN AGAIN JOINS IN SEX ORGY.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).

"RESURRECTION OF EVE"
PART 12 OF 15 PARTS
(61:34-61:35) SEX ORGY CONTINUES - FELLATIO SEXUAL INTERCOURSE, LESBIANISM, MASTURBATION, SEXUAL INTERCOURSE. (62:38-63:41) EVE IN CAR. FRANK TELLS EVE TO GET RID OF HER HANGUPS. (63:45-67:21) SCENES ALTERNATE BETWEEN PARTY SCENES AND EVE PERFORMING FELLATIO AND EVE AT HOME.

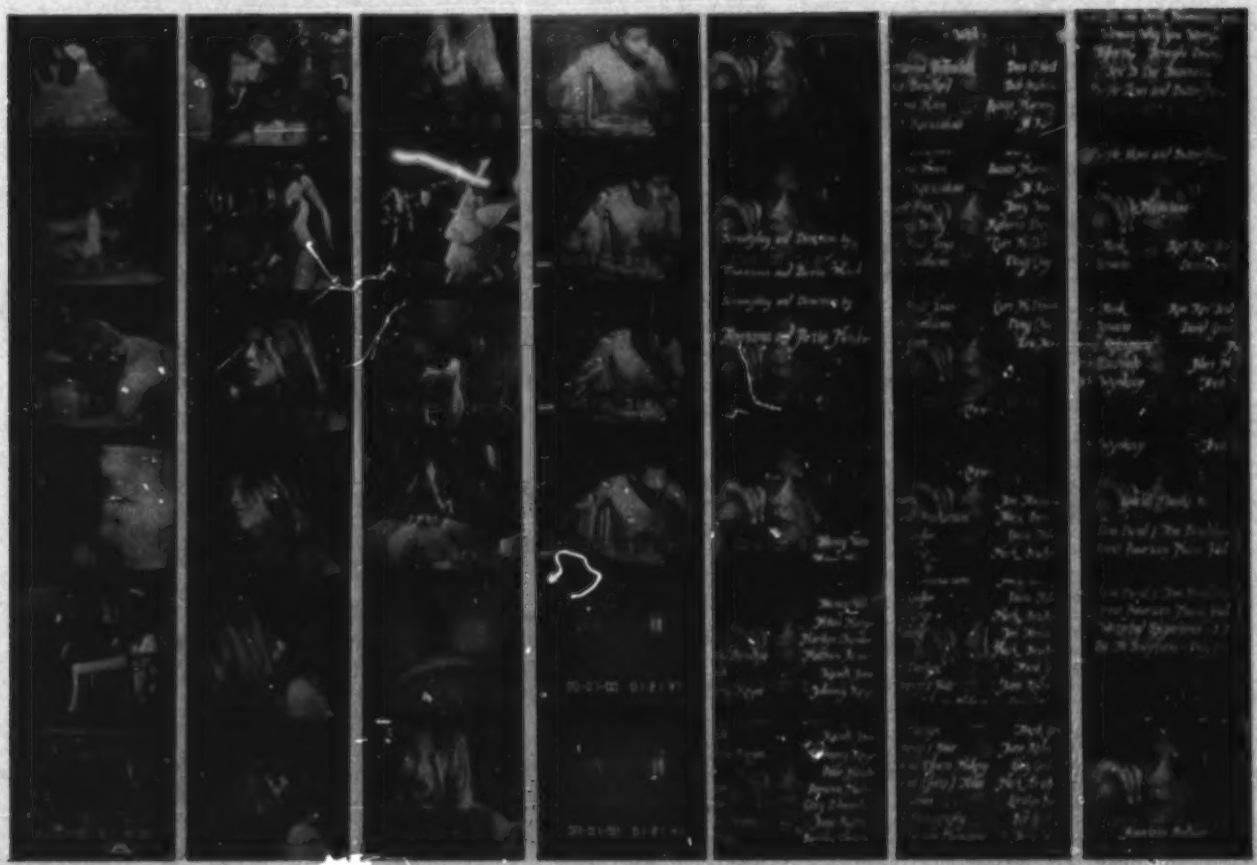
"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 13 OF 15 PARTS
(67:25-68:05) EVE COLLAPSES ON BED. FRANK IS DISGUSTED. (68:09-70:16) FRANK GOES TO STATION TO WORK. EVE ACCEPTS PHONE INVITATION TO GROUP SEX PARTY. (70:21-73:14) SEX PARTY - FEMALE PERFORMING FELLATIO. CUNNILINGUS PERFORMED ON EVE. LESBIANISM. SEXUAL INTERCOURSE.

"RESURRECTION OF EVE"
PART 14 OF 15 PARTS
(73:17-73:28) GROUP SEX ORGY. (73:32-73:39) PENIS EJACULATES IN MOUTH OF FEMALE. (73:43-73:59) GROUP SEX CLOSEUP OF SEMEN EJACULATING FROM MALE PENIS. (74:02-75:00) PARTY SCENE. (75:04-76:25) SEX ORGY PARTY. FELLATIO. SEXUAL INTERCOURSE. (76:28-79:06) EVE IS DISROBED BY BLACK FIGHTER. HE FONDLES HER BREASTS. EVE MOUNTS FIGHTER IN SEXUAL INTERCOURSE WHILE HE IS SEATED.

"RESURRECTION OF EVE": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 24595) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO ANATUNA, INC. (DATE OF ISSUANCE: NOV. 10, 1973).



"RESURRECTION OF EVE"
PART 15 OF 15 PARTS
(79:10-82:06) SEXUAL INTERCOURSE, FELLATIO, SEXUAL ORGY. (82:10-84:15) CREDITS.

APPENDIX D

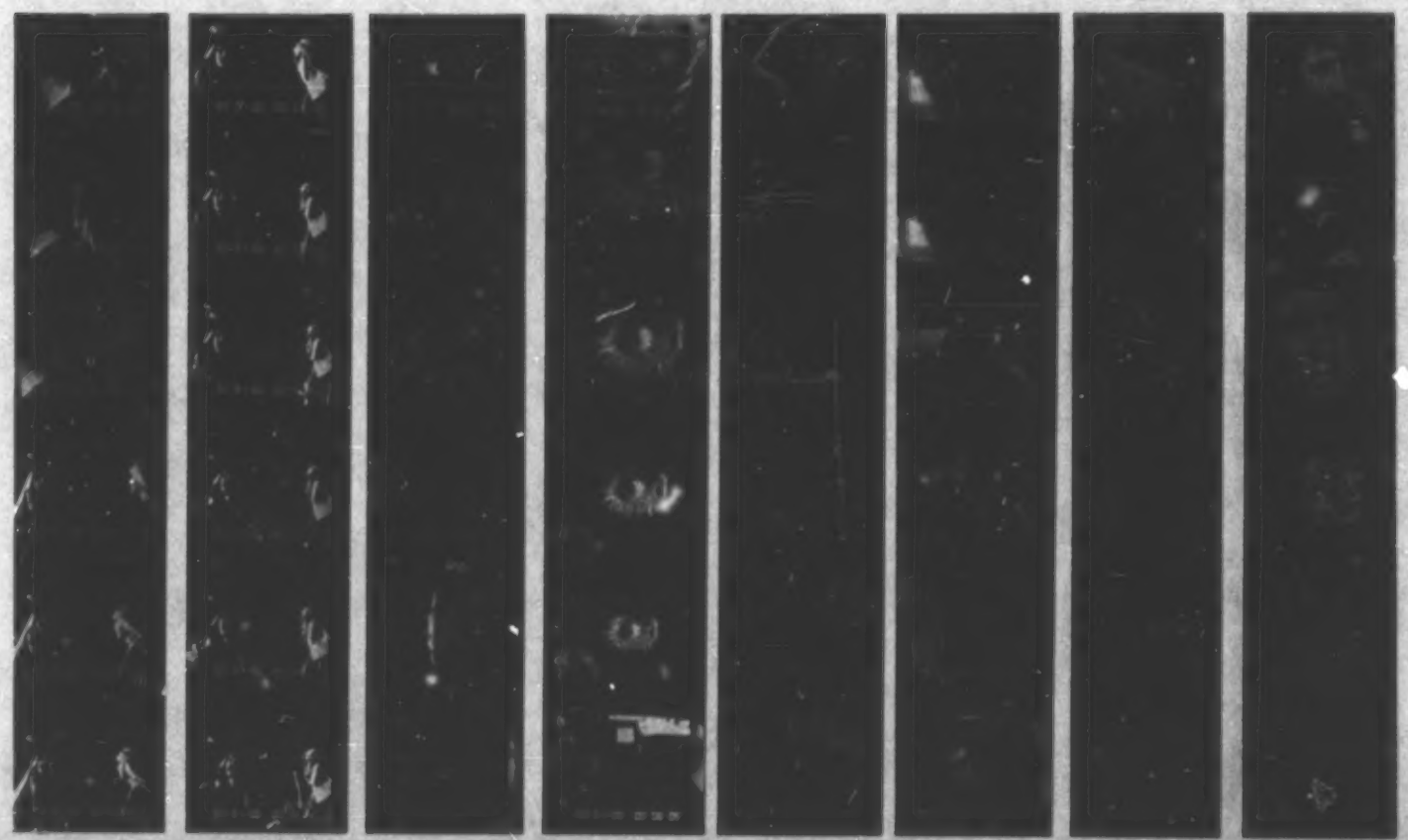
TIME-MOTION STUDY* OF THE FILM

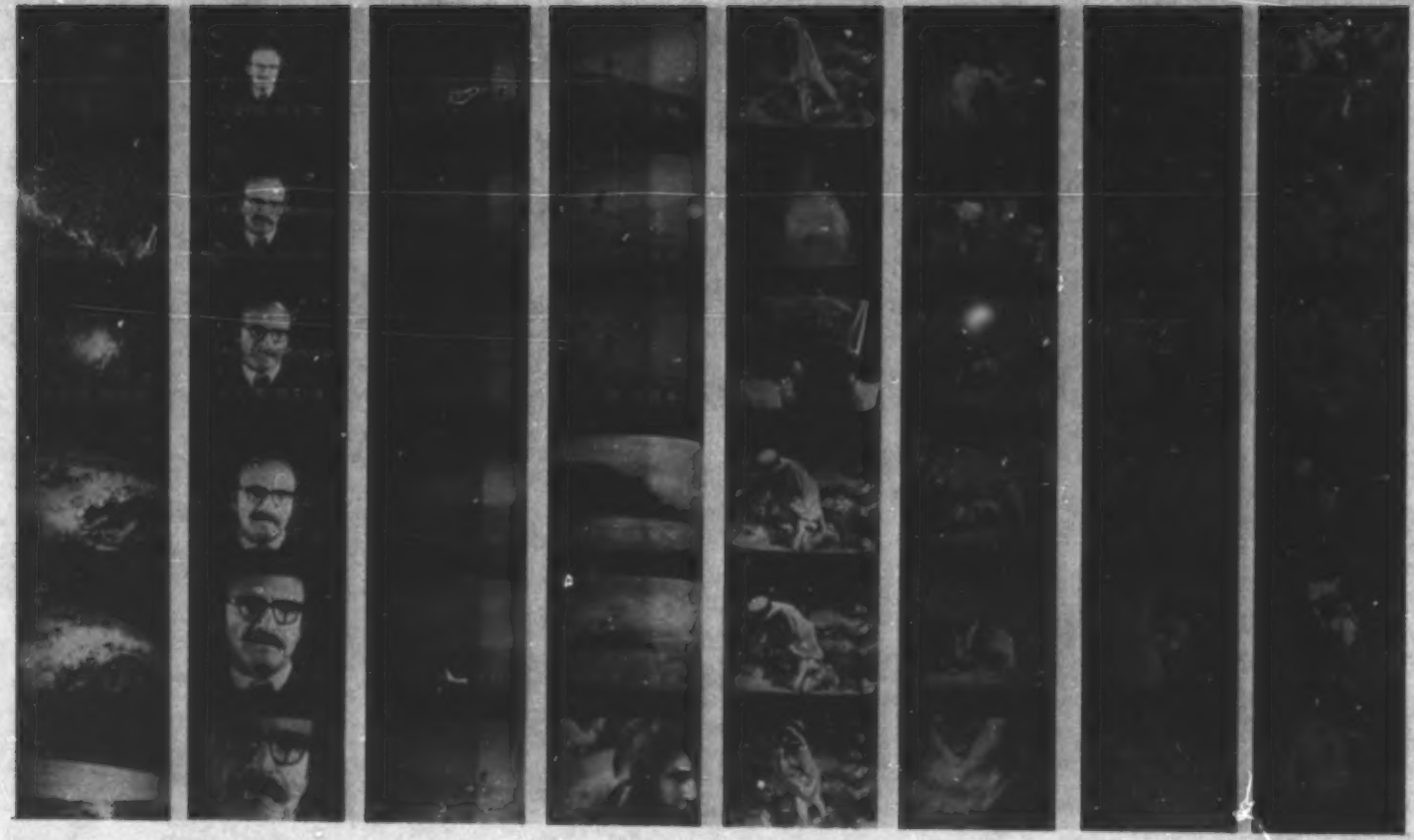
"SODOM AND GOMORRAH"

The motion picture film "Sodom and Gomorrah" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 14, 1975.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

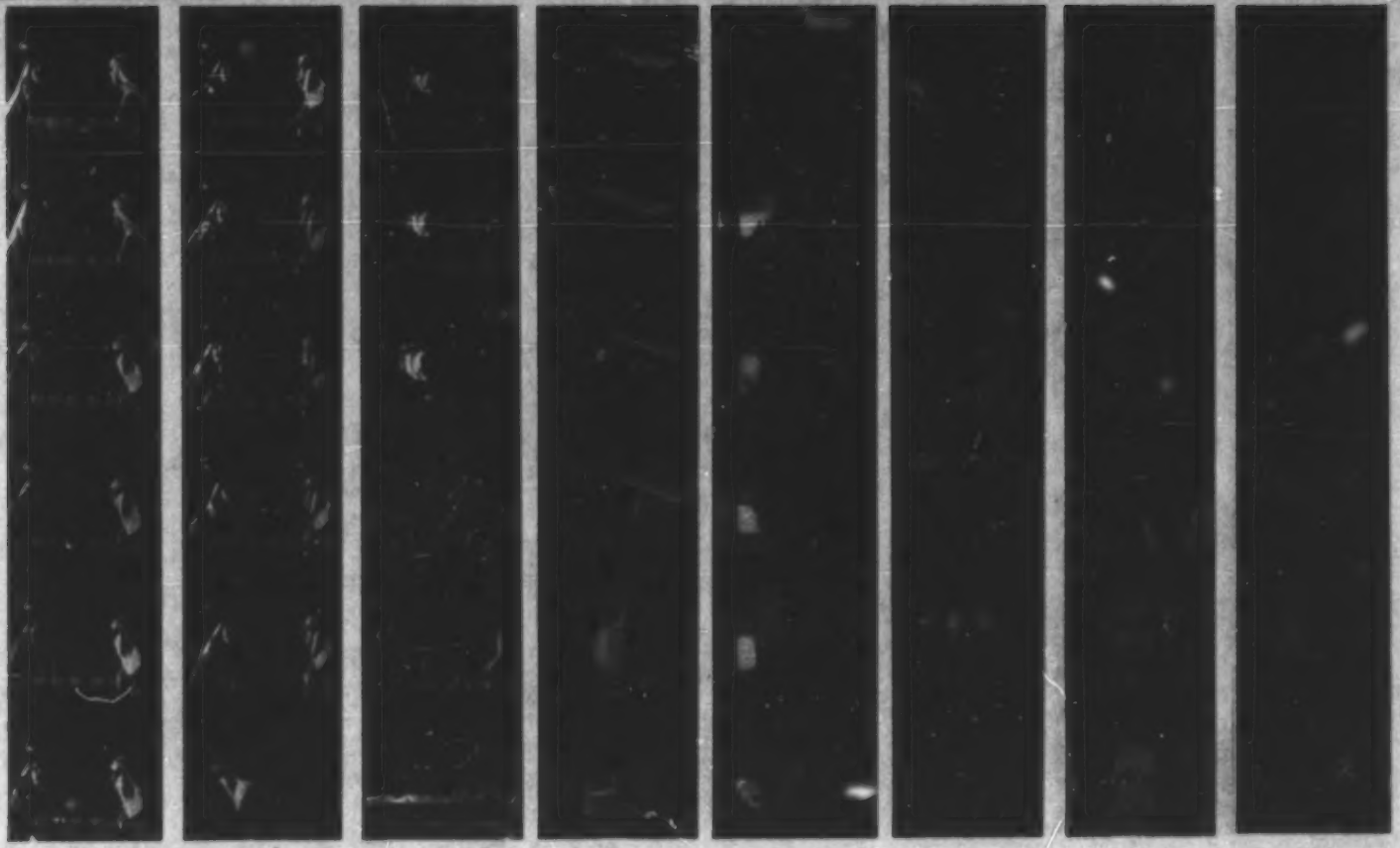
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





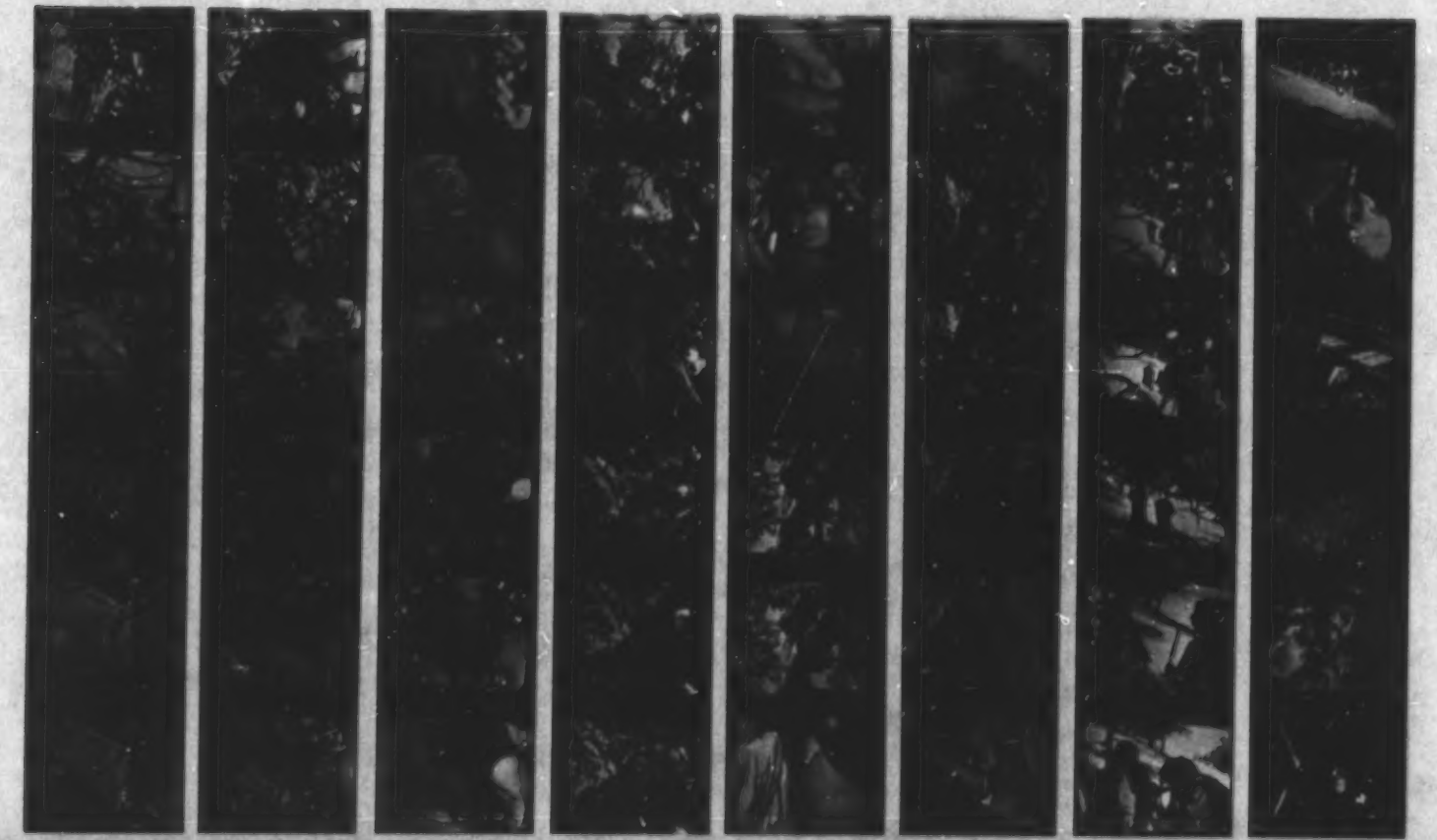
"SODOM AND GOMORRAH"
PART 1 OF 18 PARTS
(00:01-01:33) TITLE, "SODOM AND GOMORRAH" AND FACE OF NARRATOR. (01:36-03:12) MALE CHASING FEMALE, CATCHES HER, AND FORCES HER TO PERFORM FELLATIO. (03:15-03:40) FELLATIO. (03:47-04:19) FRIENDS OF FEMALE KILL MALE. (04:22-05:36) LOT AND PART OF FAMILY TO TALK TO STRANGERS.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 2 OF 18 PARTS
(05:40-07:05) LOT AND FAMILY DISCUSS MOVING. (07:08-08:47) SPACE SHOTS. INSIDE A SPACE SHIP A MONKEY DRESSED IN A CAPE AND HAT IS APPARENTLY TUNING IN ON LOT'S CONVERSATION. THE MONKEY'S VOICE HAS A "JOHN WAYNE" ACCENT (08:51-11:16) LOT AND FAMILY. MALE MEETS ONE OF LOT'S DAUGHTERS. THEY GO OFF INTO THE HILLS AND CLIMB A TREE

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



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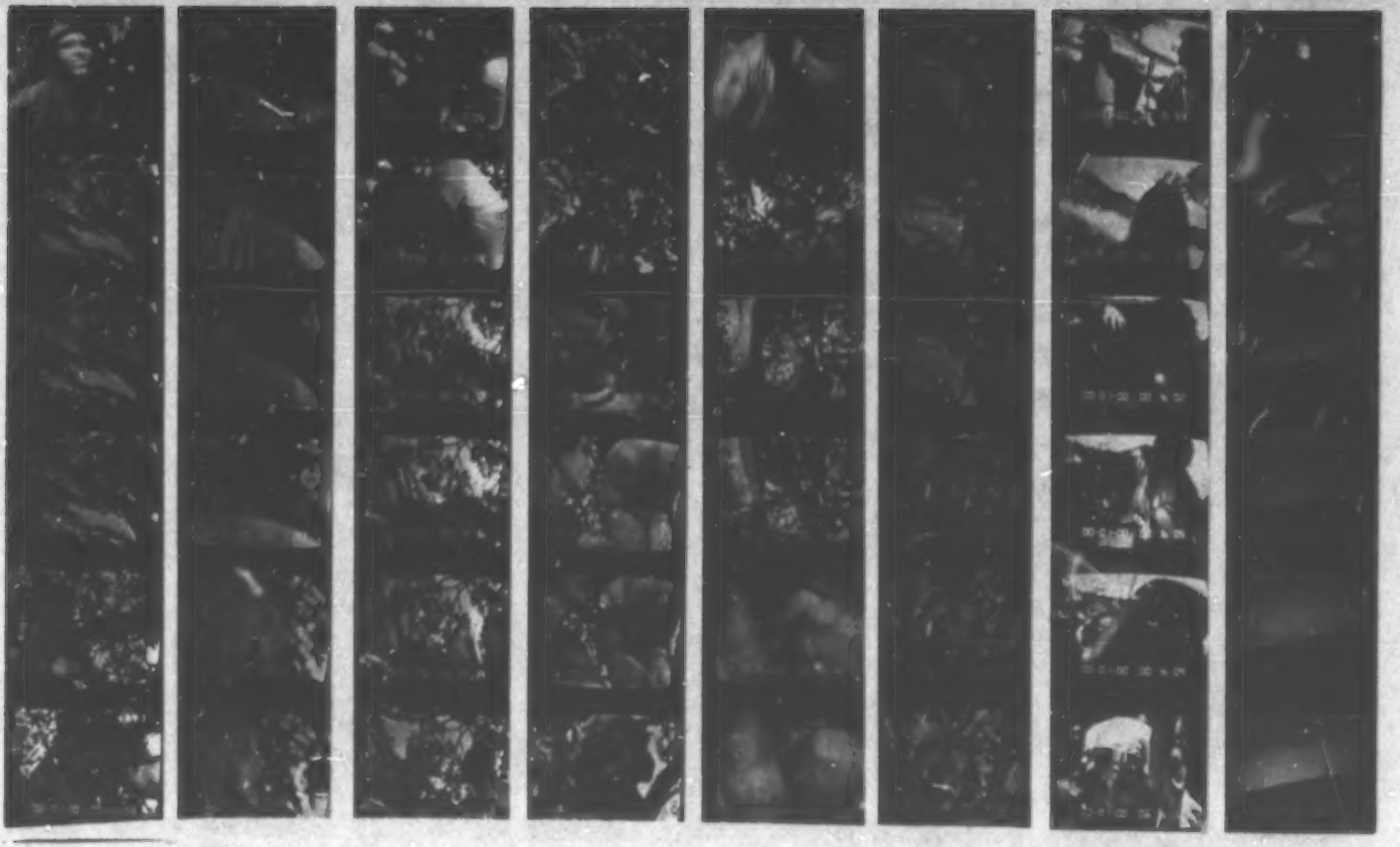


"SODOM AND GOMORRAH"
PART 3 OF 18 PARTS
(11:19-12:19) MALE AND FEMALE IN TREE. (12:23-13:16) MALE ENGAGES IN CUNNILINGUS WITH FEMALE. (13:19-14:02) MALE AND FEMALE DISCUSS THAT NORMAL INTERCOURSE IS AGAINST THE LAW. (14:05-15:33) COUPLE ENGAGES IN SODOMY IN A TREE. (15:37-16:12) MALE REMOVES PENIS FROM FEMALE'S ANUS AND EJACULATES. EJACULATION FALLS ON THE FACE OF LOT WHO IS UNDER THE TREE. (16:15-16:41) SCENE SHIFT TO SPACE SHIP AND MONKEY. (16:44-16:55) LOT GOES OFF ALONE TO PRAY.

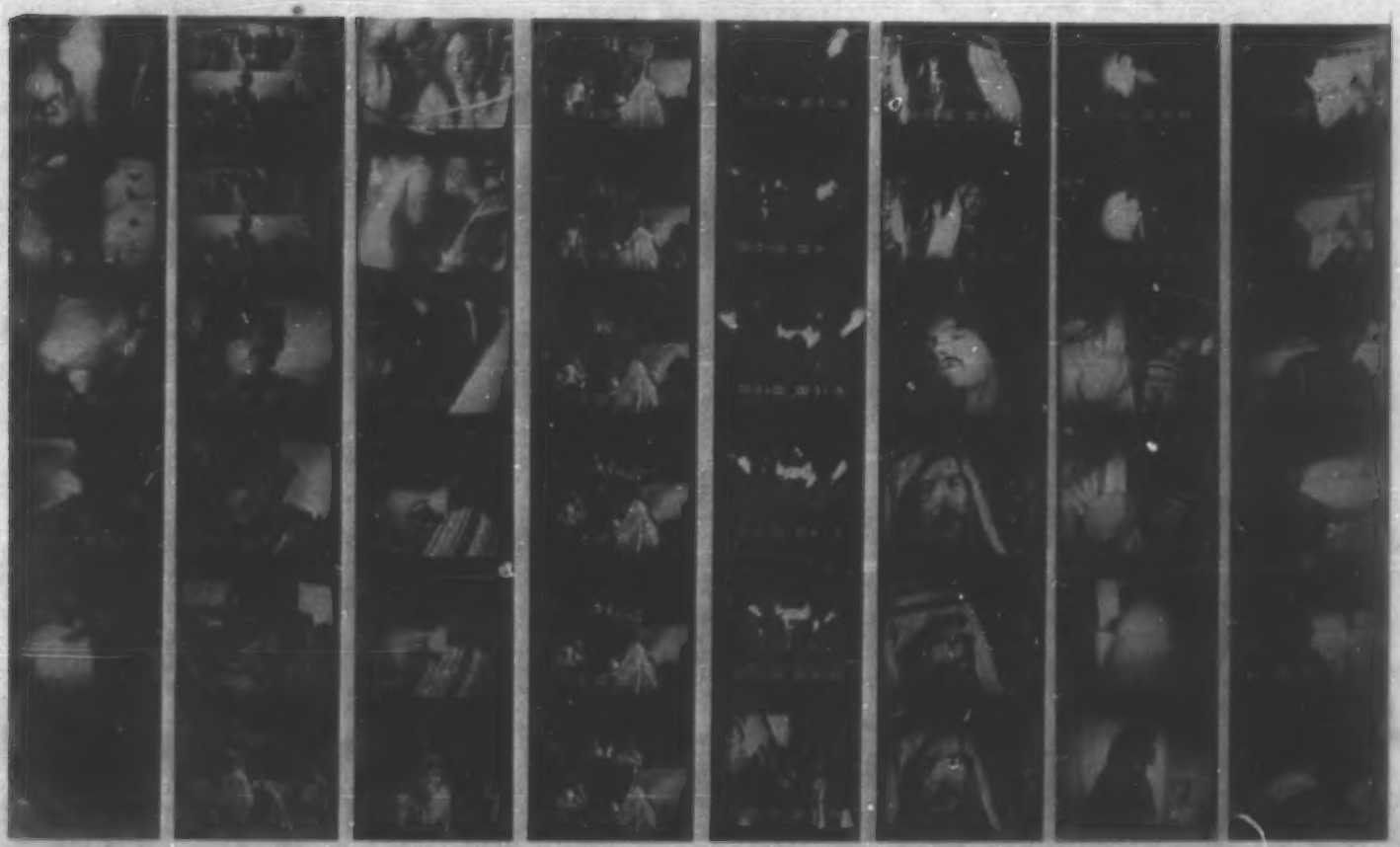
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS"; CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

"SODOM AND GOMORRAH"
PART 4 OF 18 PARTS
(16:58-17:37) LOT PRAYS. (17:41-22:08) A MALE AND FEMALE MEET, TALK, AND THEN ENGAGE IN SEXUAL INTERCOURSE UNDER TREE. MALE WITH LONG BEARD AND STAFF APPROACHES MALE AND FEMALE UNDER TREE. (22:12-22:39) MALE WITH BEARD MASTURBATES AND FELLATES HIMSELF.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

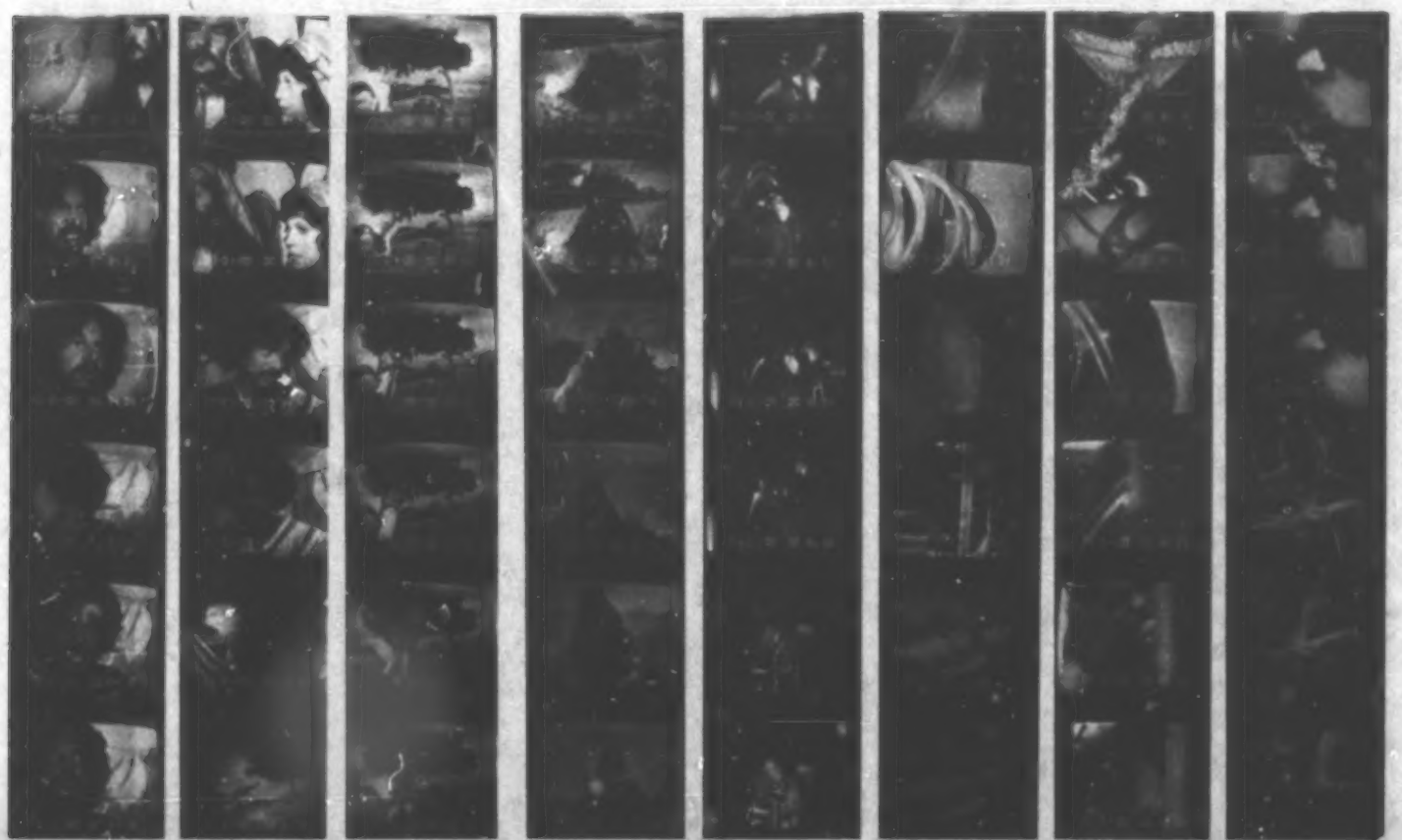
"SODOM AND GOMORRAH"
PART 5 OF 18 PARTS
(22:40-23:49) MALE WITH BEARD CONTINUES TO MASTURBATE WHILE WATCHING COUPLE ENGAGED IN INTERCOURSE. (23:54-24:38) SCENE SHIFTS. LOT AND HIS FAMILY ARRIVE IN SODOM. THEY WATCH SLAVE BUYING SCENE WHERE FEMALES ARE PUT ON AUCTION AND SOLD. (24:42-24:45) CUSTOMER INSPECTS FEMALE VAGINAL AREA. (24:49-26:28) SCENES OF SLAVE MARKET. (26:31-27:07) KING OF SODOM. (27:10-28:11) LOT AND FAMILY TALKING IN FRONT OF THE KING OF SODOM, AS SLAVE AUCTION CONTINUES.

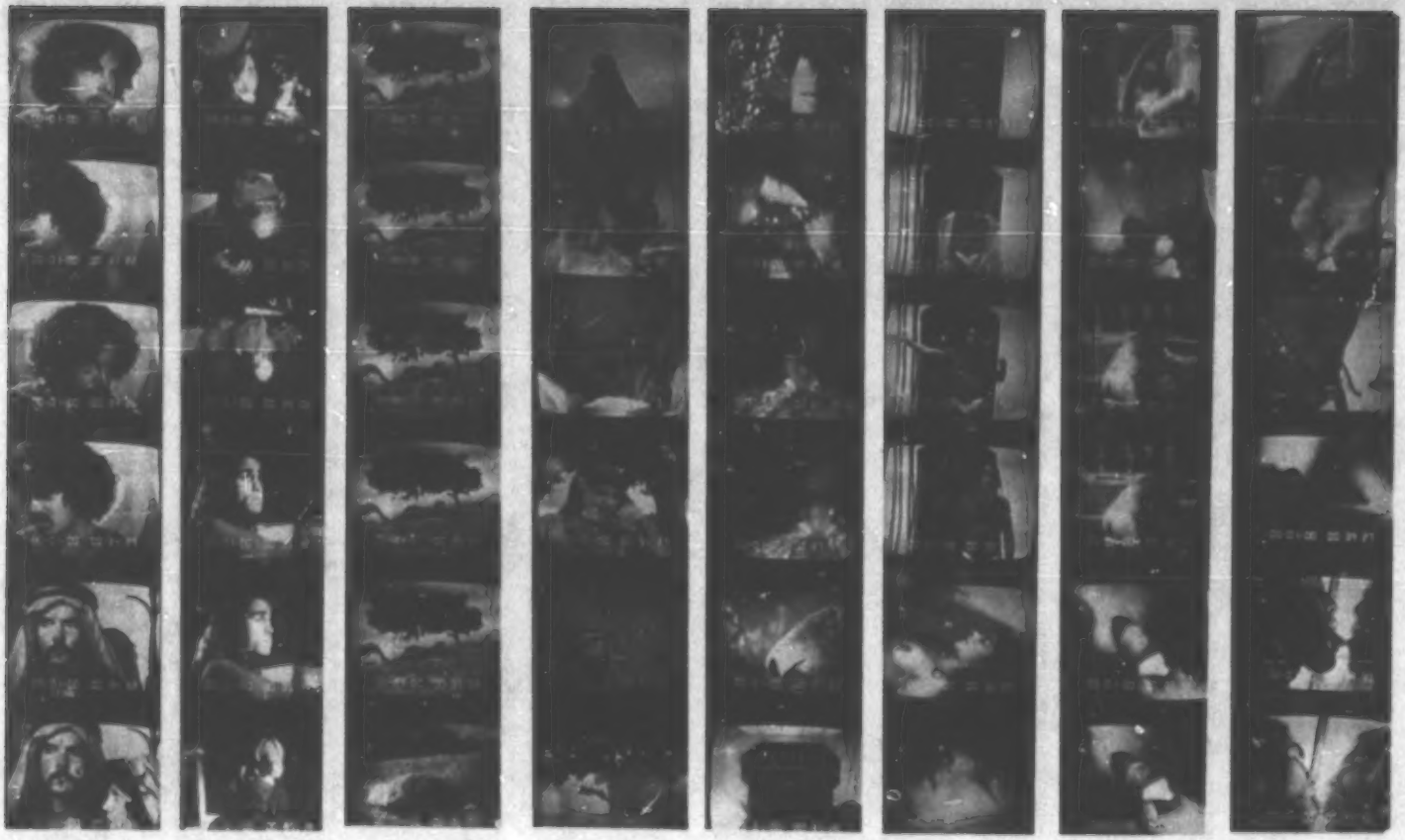
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 6 OF 18 PARTS
(28:17-28:49) GENITALS ARE SHOWN. FEMALE LICKS FINGERS. (28:53-33:54) KING OF SODOM TALKS WITH LOT AND HIS WIFE.

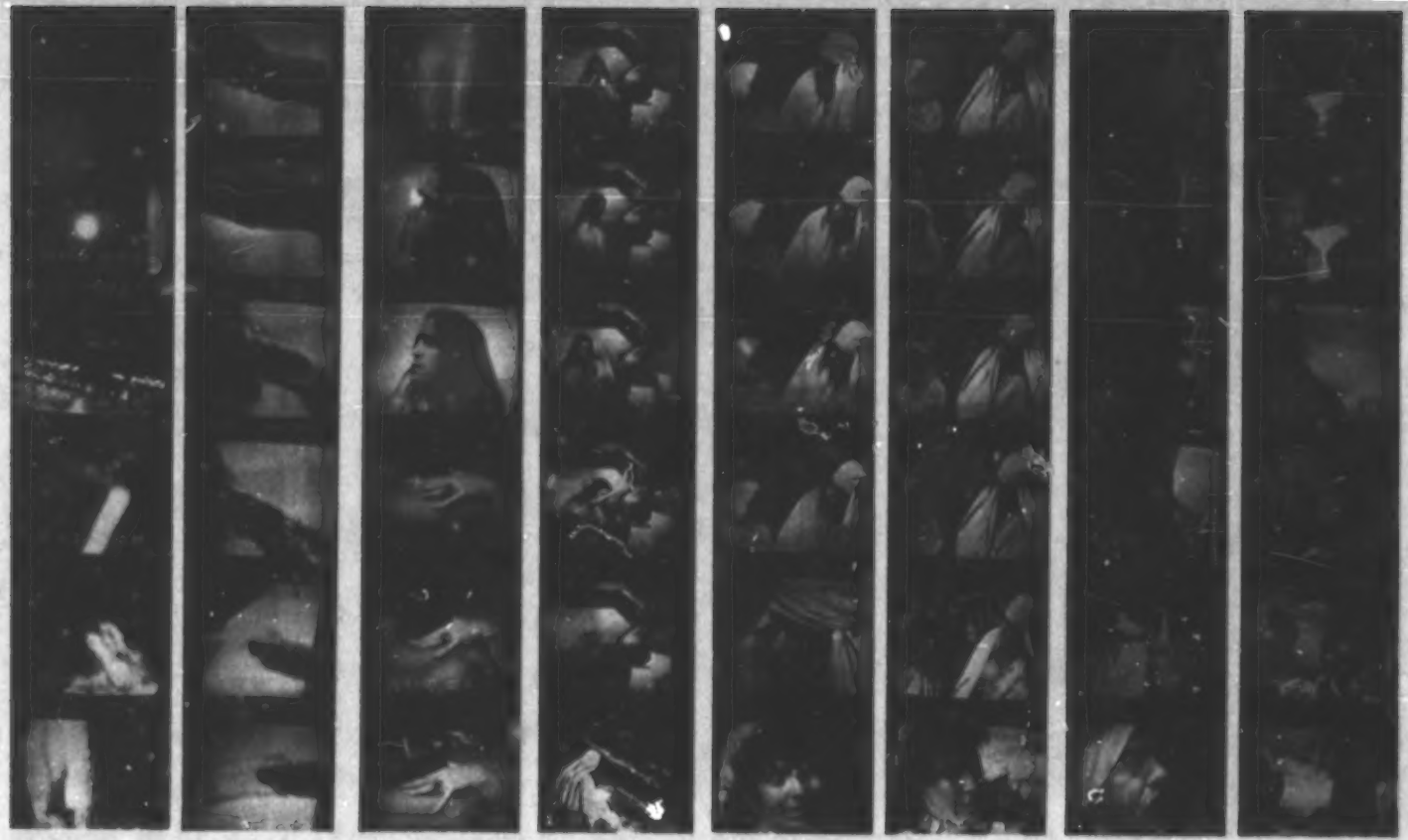
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





"SODOM AND GOMORRAH"
PART 1 OF 18 PARTS
(33:58-34:54) KING OF SODOM CONTINUES TALKING WITH LOT. (34:58-39:34) SPACE SHIP INTERIOR SHOW MONKEY AND MALE ASSISTANT DRESSED IN BATHING SUIT AND CAPE. LOT GOES OFF TO PRAY AGAIN. SCENE SWITCHES TO MALE IN SPACE SHIP. HE ENTERS ROOM WHERE NUDE FEMALE RESTS IN GLASS CASE. MALE PRESSES AGAINST AGAINST CASE AND BEGINS TO MASTURBATE.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 8 OF 18 PARTS
(39:37-41:52) MALE MASTURBATES AGAINST CASE, EJACULATES INTO TUBE. (41:55-42:20) MALE THEN TALKS WITH MOOSE HANGING ON WALL. (42:23-45:13) MALE FROM SPACE SHIP SHOWN ON EARTH DRESSED IN BIBLICAL CLOTHES TALKING WITH ONE OF LOT'S DAUGHTERS.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

"SODOM AND GOMORRAH"
PART 9 OF 18 PARTS
(45:17-45:34) SPACE SHIP MALE NOW DRESSED IN ZARTH CLOTHES TALKS WITH DAUGHTERS. (45:39-45:49) LOT AND HIS WIFE SELLING THINGS AT A STORE THEY HAVE SET UP IN SODOM. (45:52-46:13) A MALE GOES IN BACK SECTION OF TENT WITH LOT'S WIFE. MALE PLACES CUCUMBER IN THE VAGINA OF LOT'S WIFE, THEN PLACES CUCUMBER IN HIS MOUTH. (46:17-48:03) MALE AND LOT'S WIFE CONTINUE WITH CUCUMBER. (48:07-48:45) LOT AND WIFE AND OTHER PEOPLE TALKING. (48:49-50:53) KING OF SODOM TALKS TO THE PEOPLE.

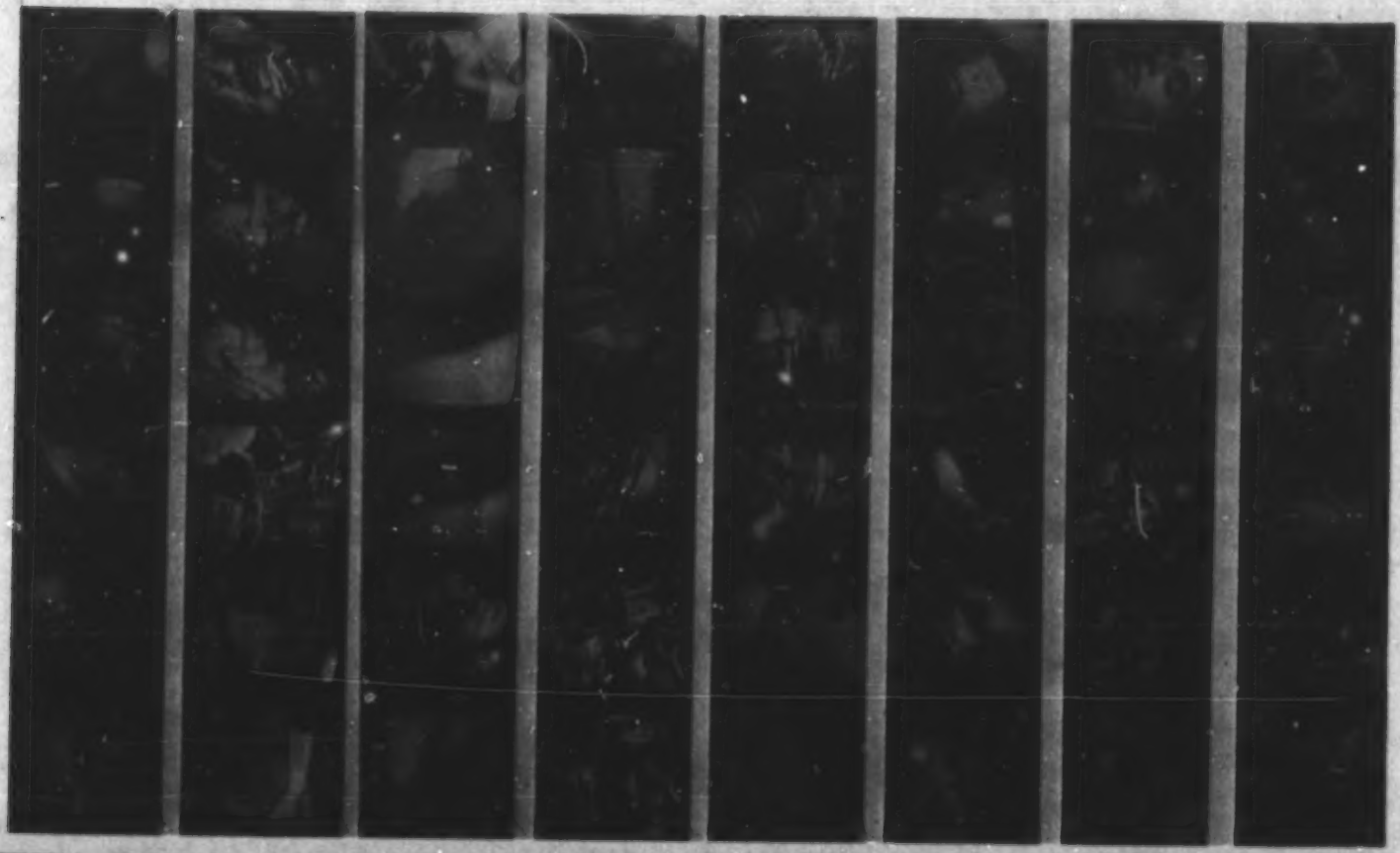
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

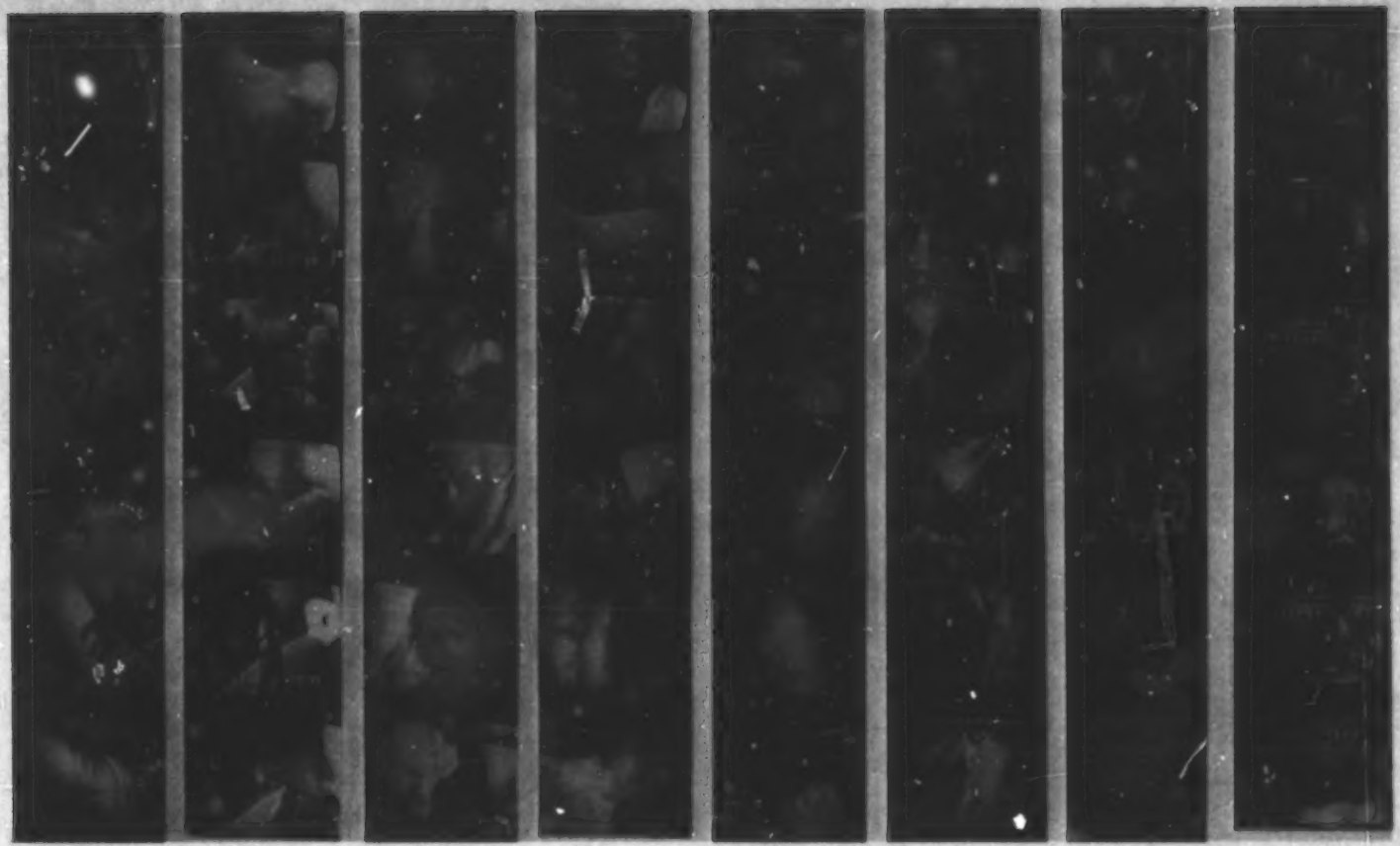
"SODOM AND GOMORRAH"
PART 10 OF 18 PARTS
(50:56-51:35) PEOPLE SPEAK WITH KING OF SODOM. (51:39-52:25) A MALE PLACES PIECE OF CHICKEN AGAINST VAGINA OF FEMALE AND THEN EATS CHICKEN. (52:28-54:43) PEOPLE CONTINUE TALKING. (54:46-56:32) FEMALES ENGAGE IN LESBIAN-TYPE KISSING OF BREASTS.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

"SODOM AND GOMORRAH"
PART 11 OF 18 PARTS
(56:35-57:43) LESBIANISM CONTINUES AND KING OF SODOM KISSES A FEMALE NEAR THE VAGINA AREA. (57:47-57:50) KING OF SODOM. (57:54-1:01:30) OUTDOOR SCENES - MARKET PLACE. PEOPLE EATING AND DRINKING. (1:01:33-1:02:01) FELLATIO. (1:02:05-1:02:13) FEMALES LAUGHING.

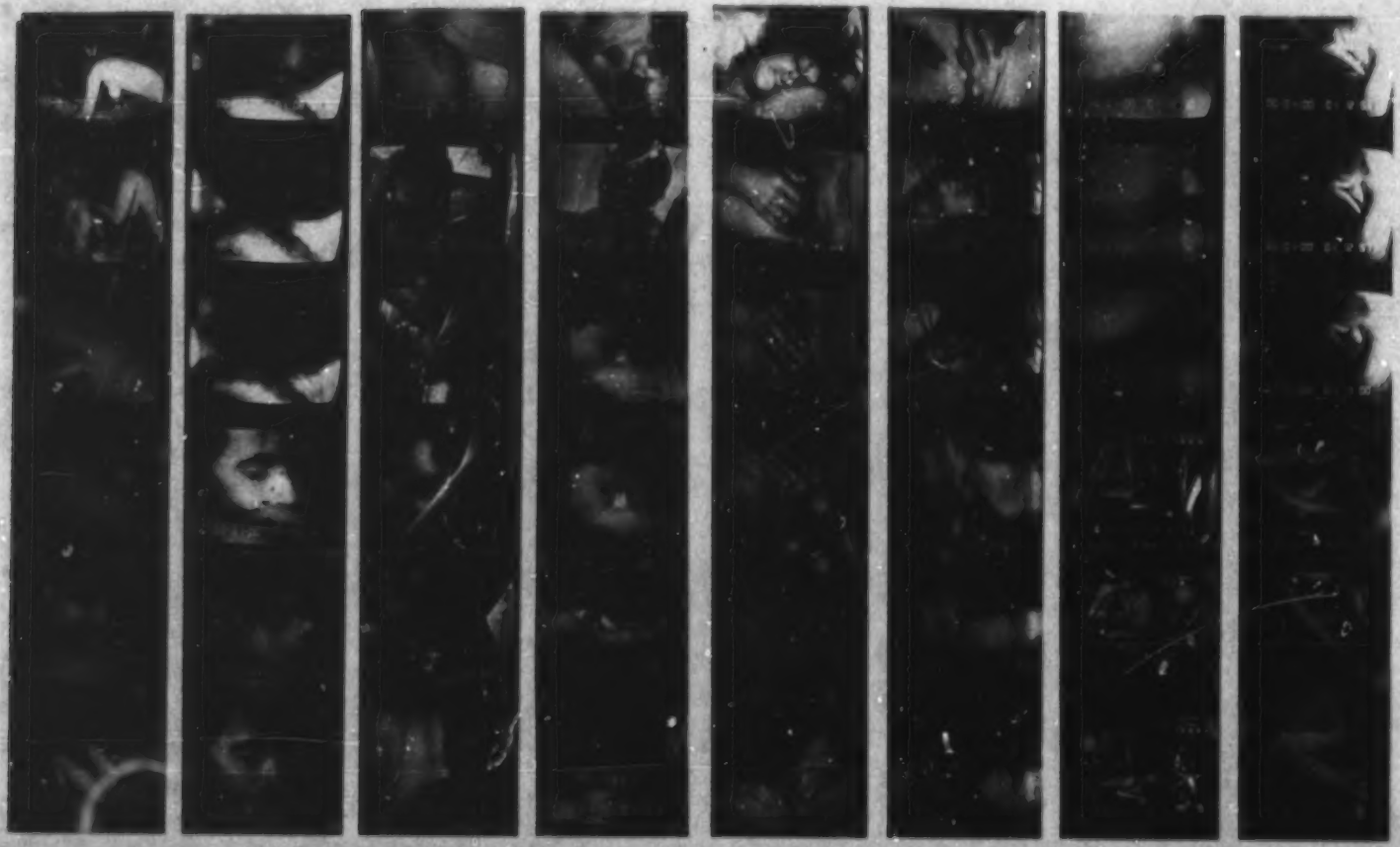
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

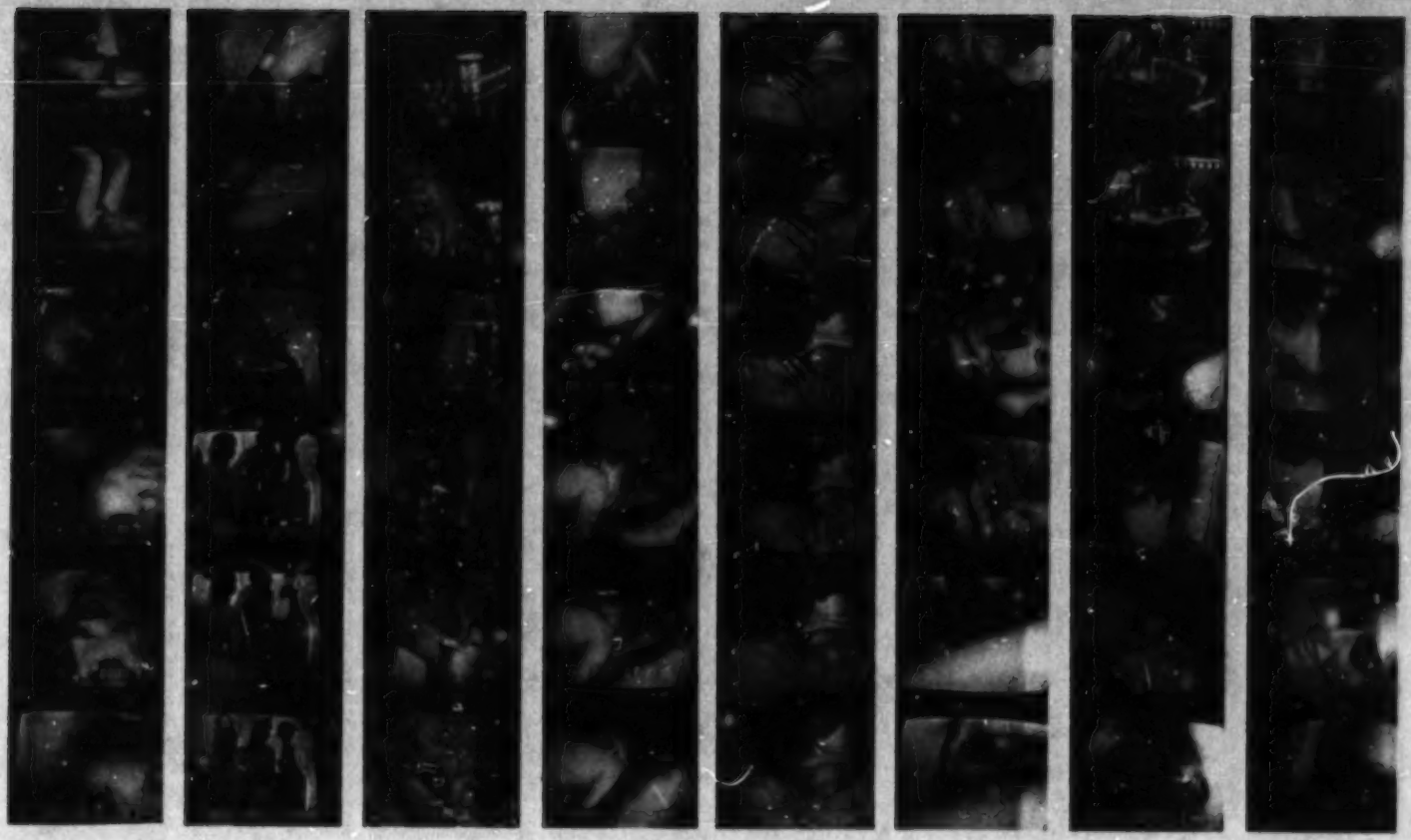




"SODOM AND GOMORRAH"
PART 12 OF 18 PARTS
(L02:16-L02:33) FELLATIO. (L02:44-L03:05) MALE PLACES BANANA IN FEMALE'S VAGINA, THEN PLACES BANANA IN HER MOUTH. (L03:09-L03:51) FELLATIO. (L03:55-L04:09) ANALINGUS. (L04:12) FELLATIO. (L04:16-L07:52) CUNNILINGUS, FELLATIO, SEXUAL ORGY.

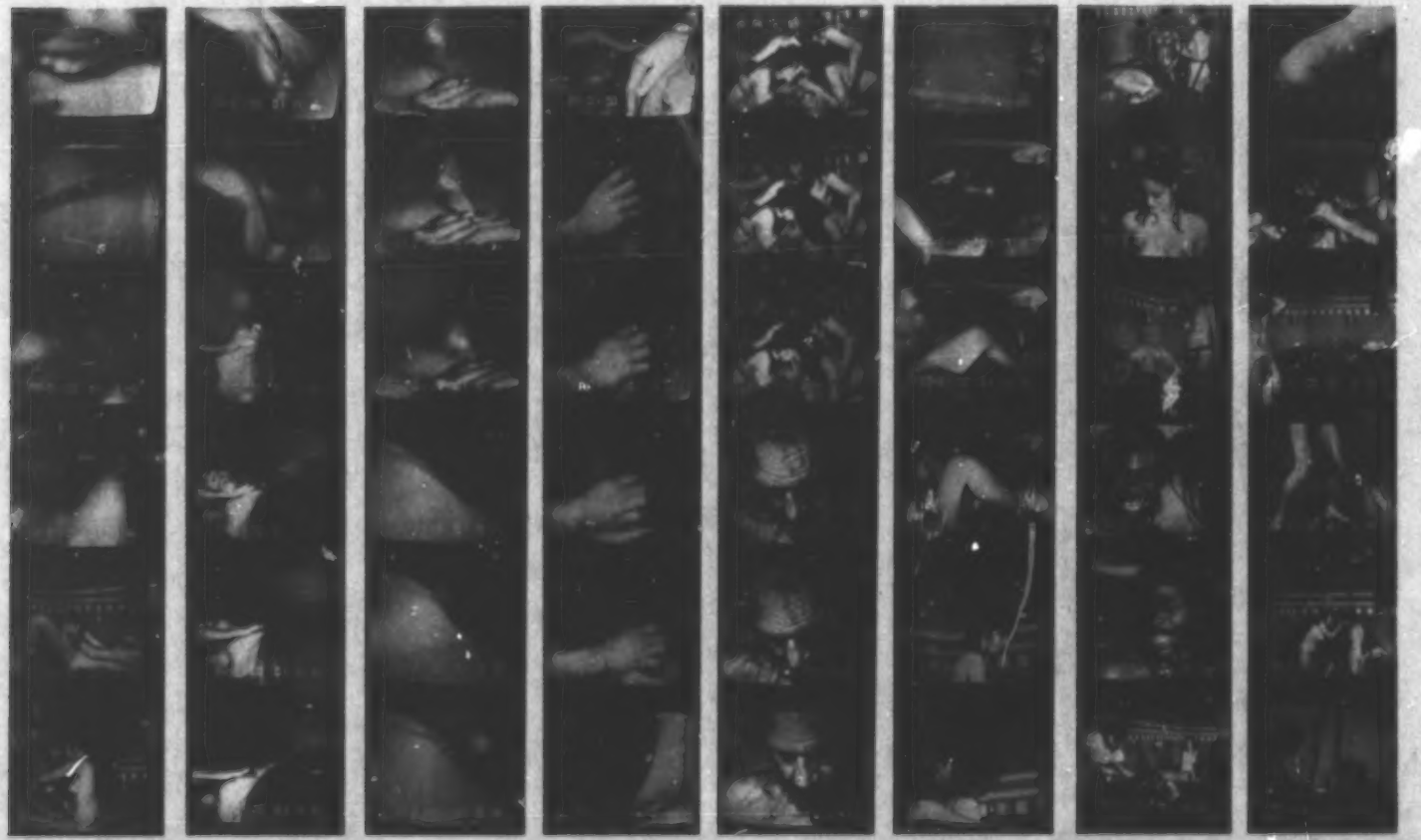
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





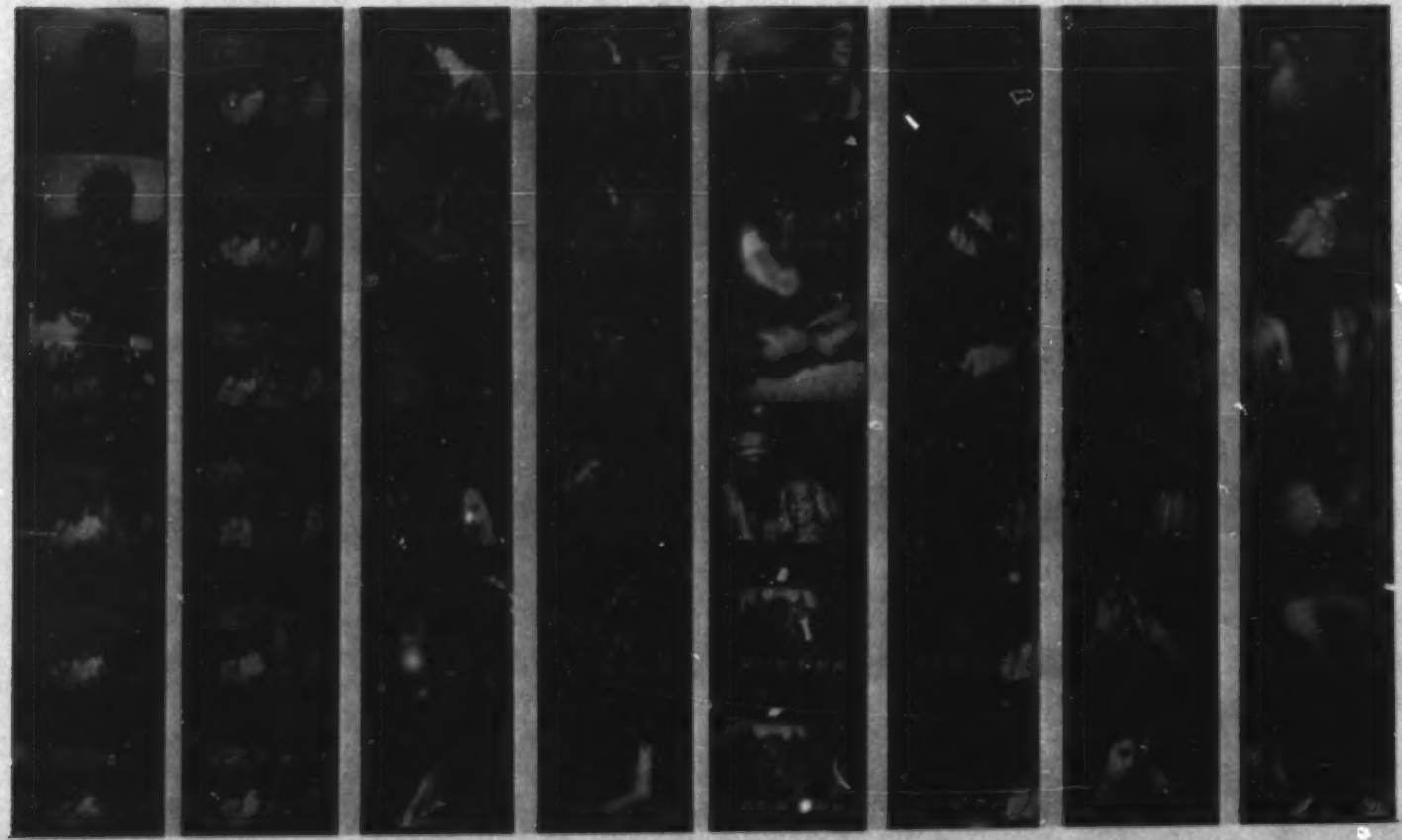
"SODOM AND GOMORRAH"
PART 13 OF 18 PARTS
(1D7:55-1I3:32) SEXUAL ORGY CONTINUES. CUNNILINGUS, SEXUAL INTERCOURSE, MASTURBATION, EJACULATION INTO A GOLD CUP, LESBIANISM.

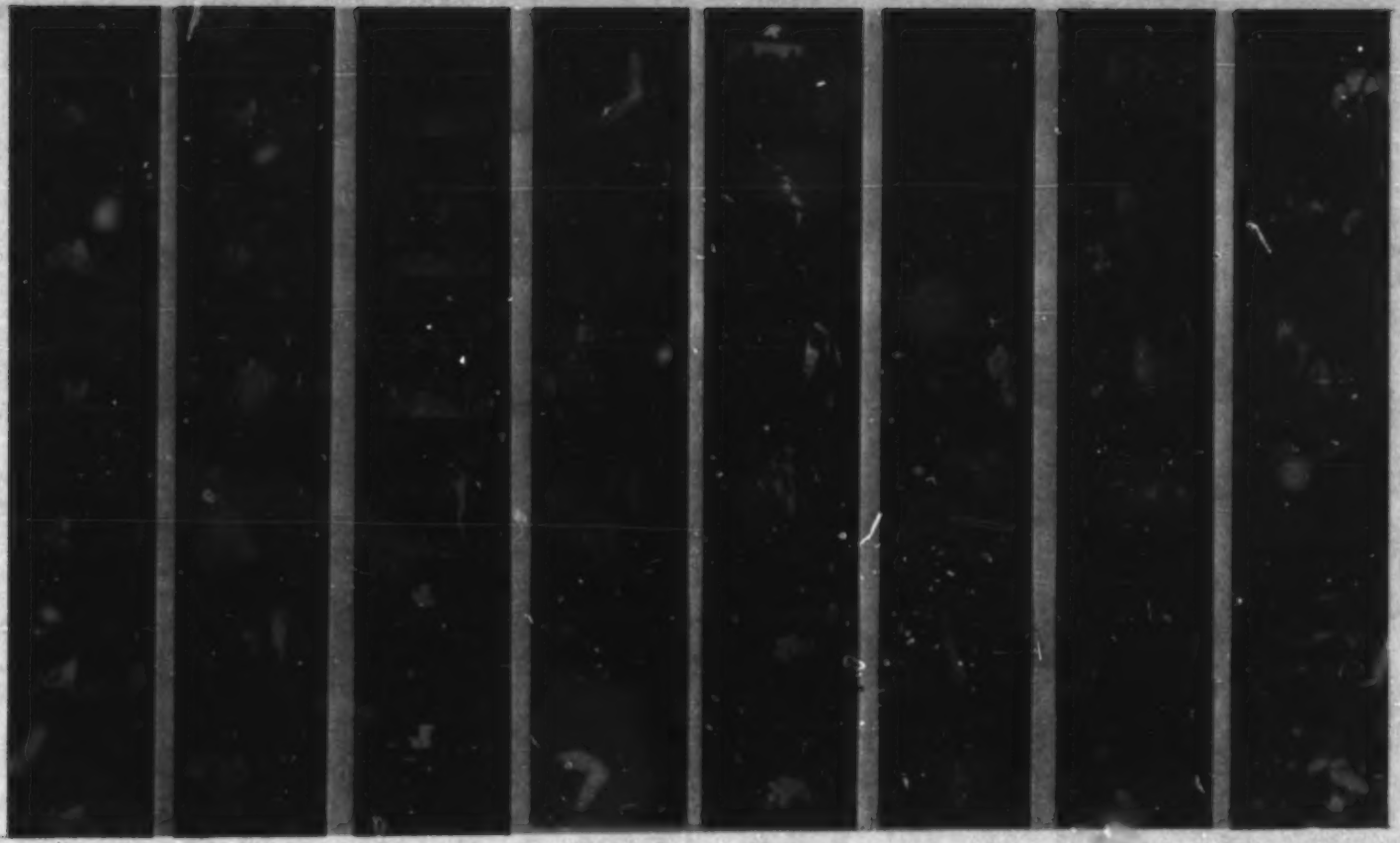
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



"SODOM AND GOMORRAH"
PART 14 OF 18 PARTS
(113:36-119:12) SEXUAL ORGY CONTINUES. CUNNILINGUS, MASTURBATION, TWO FEMALES FELLATE PENIS, BLACK MALE SODOMIZES WHITE MALE WITH CUCUMBER. SCENE SHIFT TO OUTDOORS. MALE MASTURBATES NEAR DONKEY WHICH RUNS AWAY.

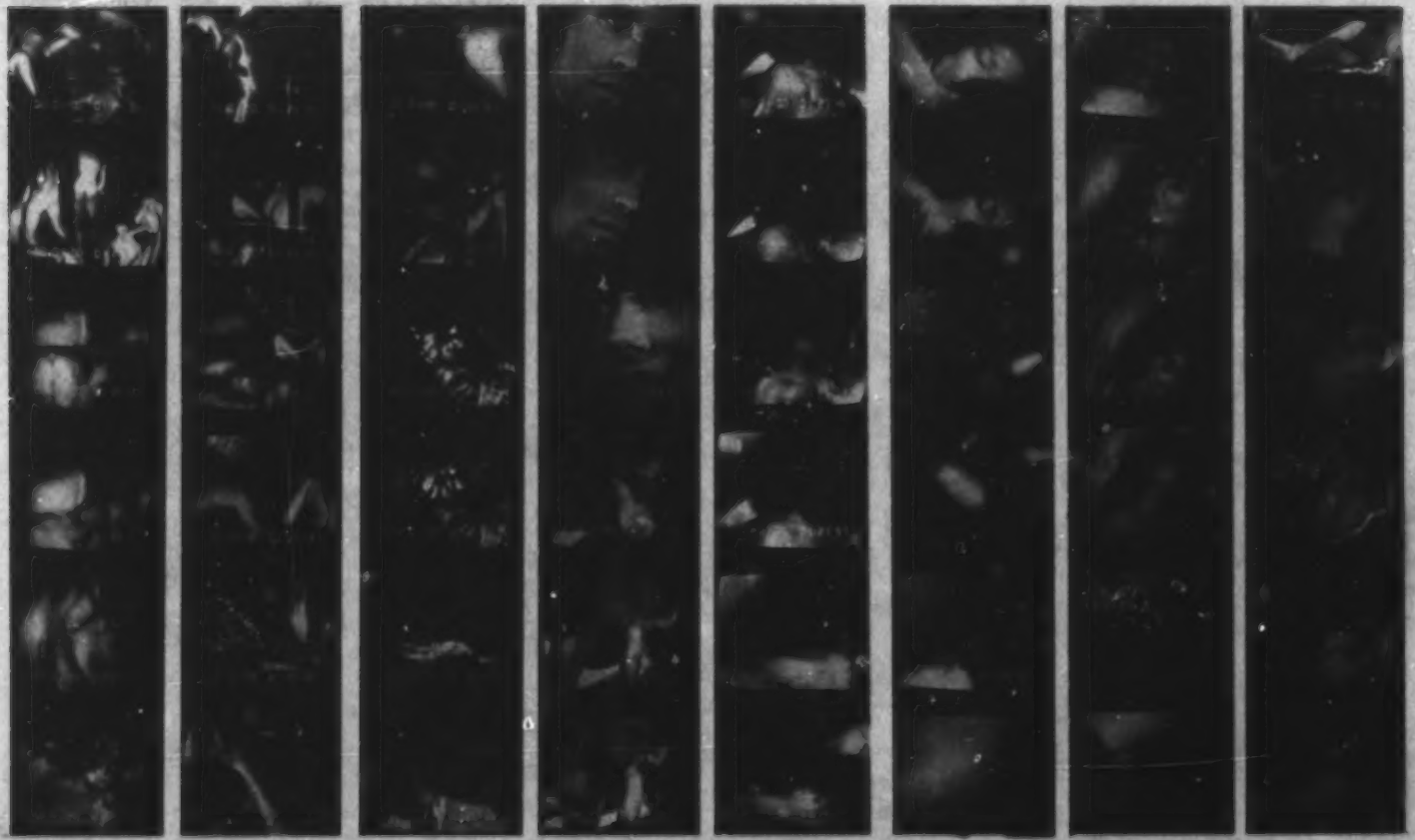
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).

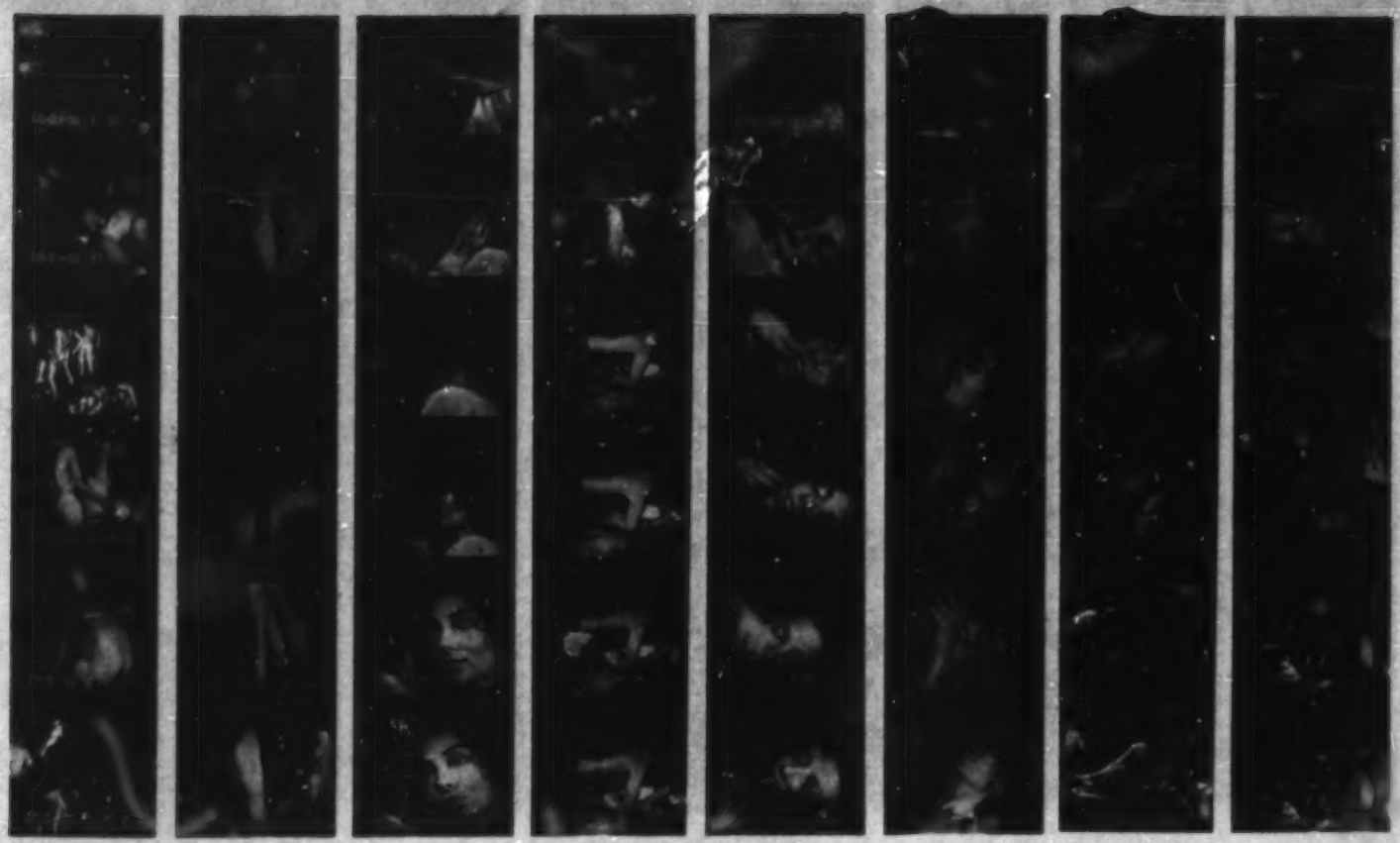




"SODOM AND GOMORRAH"
PART 15 OF 18 PARTS
(119:16-124:52) GROUP OF MALES AND FEMALES BY FIRE. MAN FROM SPACE SHIP FIGHTS WITH LONG-HAIRED, SHAGGY EARTHLING. THEY HAVE FIGHT AROUND FIRE.

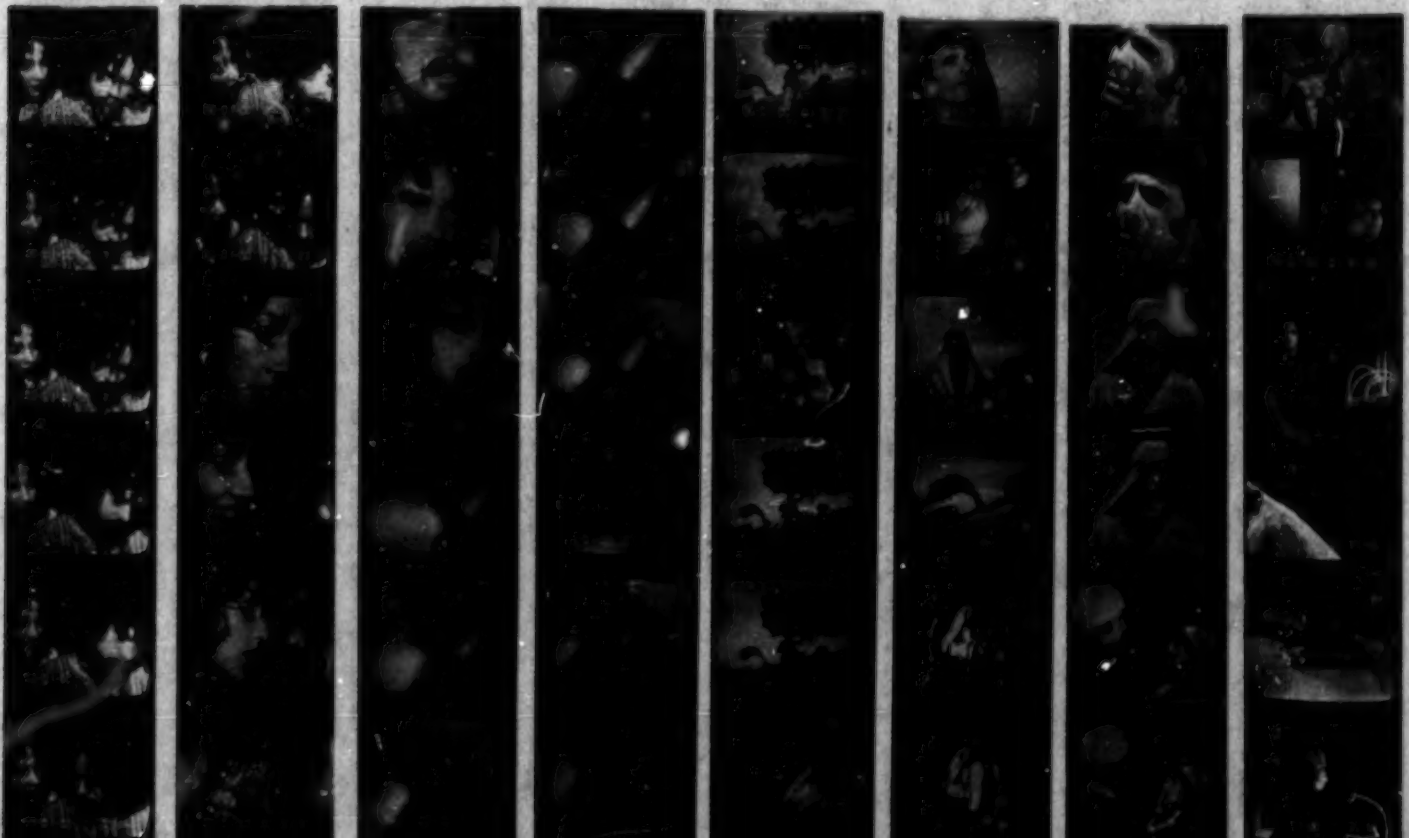
"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





"SODOM AND GOMORRAH"
PART 16 OF 18 PARTS
(L24:56-L24:59) SPACE MAN WINS FIGHT. (L25:03-L30:33) VARIOUS PEOPLE TALKING - SEXUAL ACTIVITY BETWEEN GROUPS OF MALES AND FEMALES. FELLATIO, CUNNILINGUS, SEXUAL INTERCOURSE.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).



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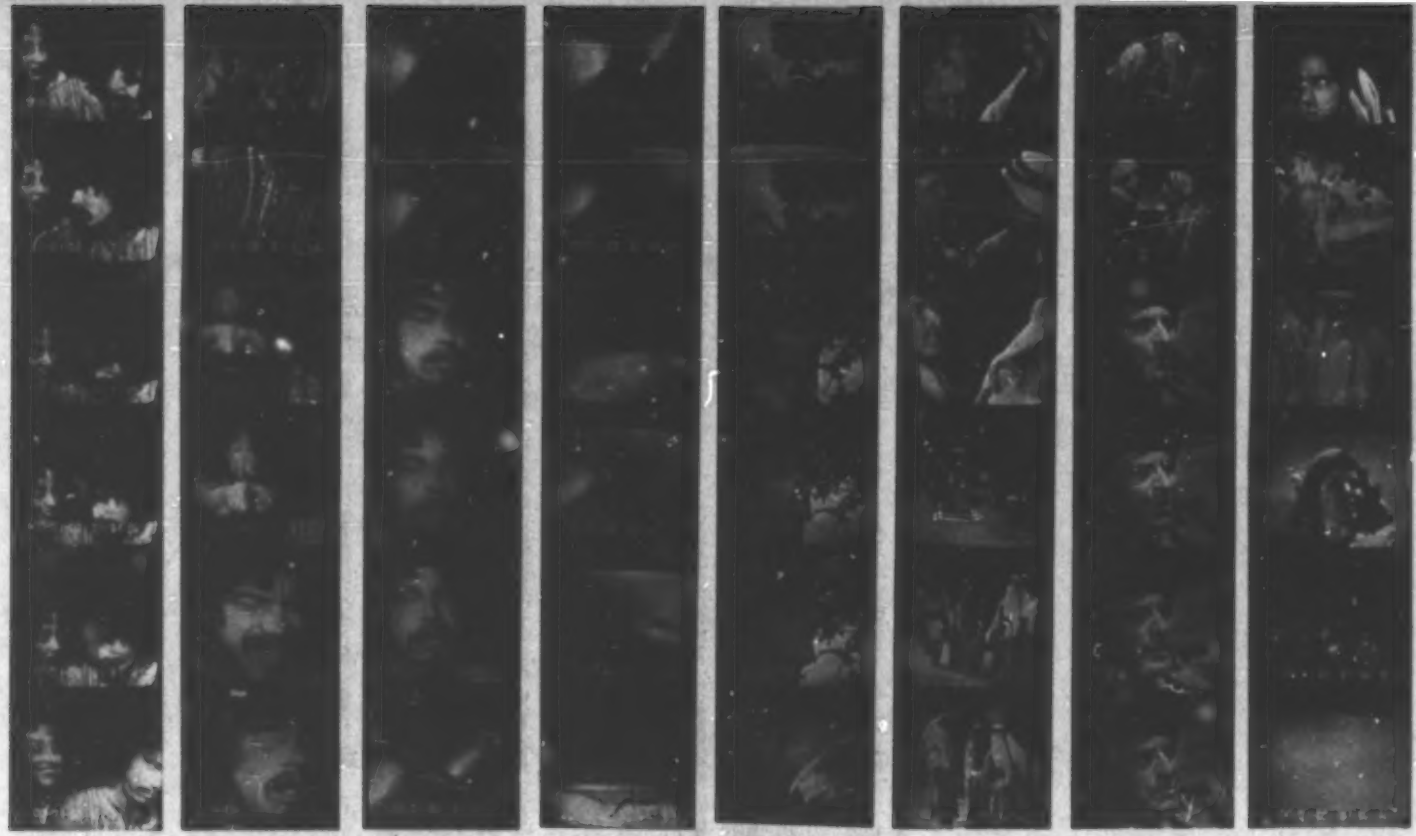
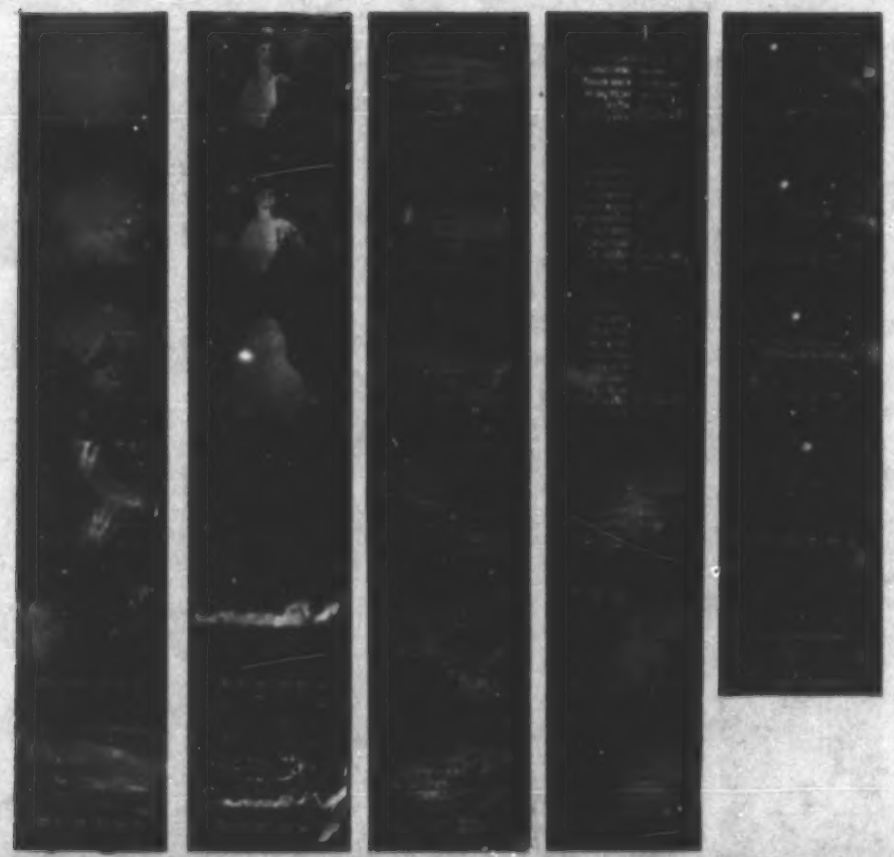
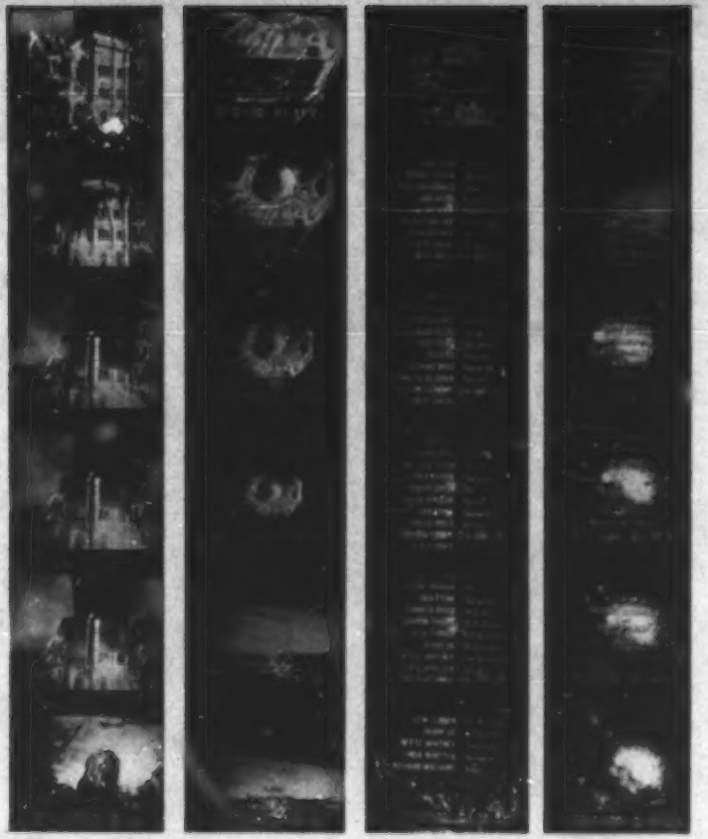


"SODOM AND GOMORRAH"
PART 17 OF 18 PARTS
(E30:36-E33:20) KING OF SODOM IN SEXUAL INTERCOURSE. (E33:23-E36:14) SCENE SHIFTS OUTDOORS. LOT AND FAMILY LEAVE SODOM. FEMALE TALKS TO SPACEMAN. SPACE MONKEY IN SPACESHIP DECIDES TO DESTROY SODOM.

"SODOM AND GOMORRAH - THE LAST SEVEN DAYS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 45011) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 14, 1975).





"SODOM AND GOMORRAH"
PART 18 OF 18 PARTS
(1:36:17-1:36:56) SCENES OF SODOM BLOWN UP BY A BOMB. (1:37:00-1:39:22) LOT'S WIFE LOOKS BACK AND TURNS TO SALT. SPACE SHIP SHOWN GOING OFF IN SPACE AS CREDITS APPEAR AND FEATURE ENDS.

APPENDIX D

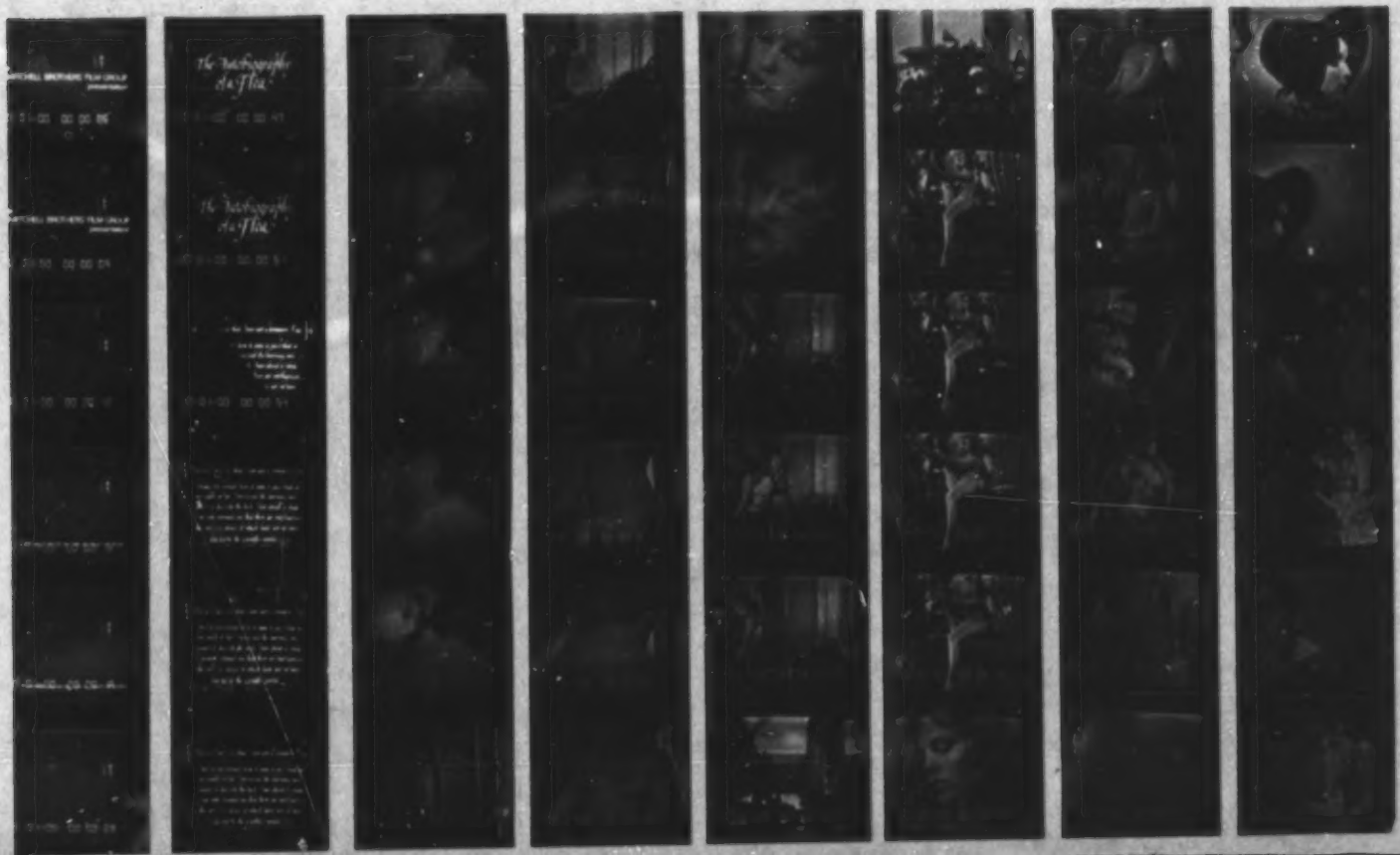
TIME-MOTION STUDY* OF THE FILM

"THE AUTOBIOGRAPHY OF A FLEA"

The motion picture film "The Autobiography of a Flea" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Oct. 12, 1976.

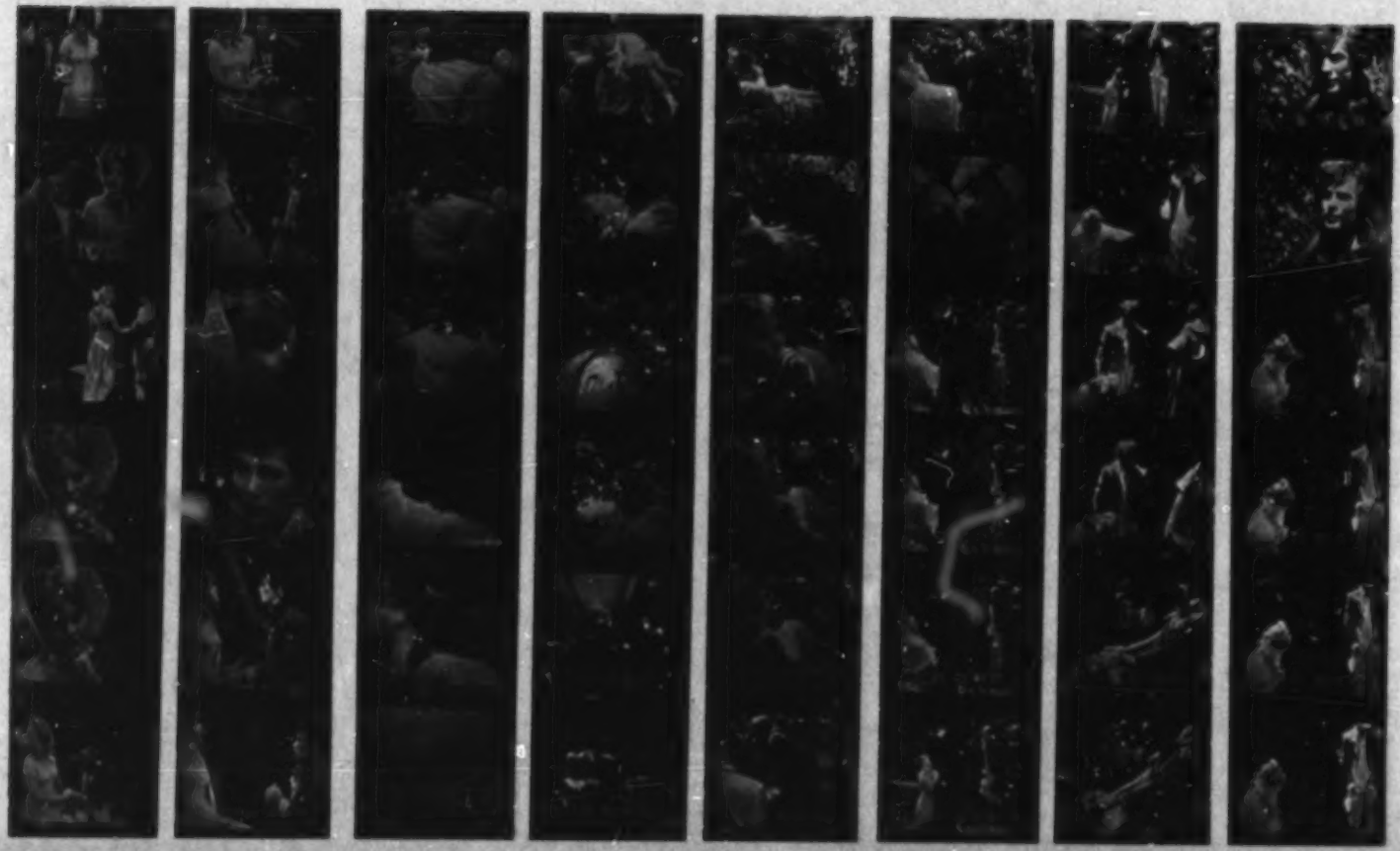
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 4[illegible]834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 1 OF 17 PARTS
(00:05-01:22) PRESENT THE TITLE AND A SHORT INTRODUCTION. AN UNSEEN FLEA NARRATES ON AND OFF THROUGHOUT THE FILM. THE FLEA HAS MADE HIS HOME IN THE VAGINA OF A 14 YEAR OLD GIRL. THE SETTING IS IN OLD FRANCE AROUND THE SEVENTEEN HUNDRED'S. (01:26-04:37) DEPICT THE 14 YEAR OLD EXAMINING HER BODY. THE NARRATOR FLEA INDICATES THAT THE FEMALE IS A VIRGIN. (04:41-05:32) DEPICT THE 14 YEAR OLD FEMALE AND THE MOTHER IN CHURCH AND A YOUNG MALE SITTING IN A PEW. THEN SCENE SHIFTS OUTSIDE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



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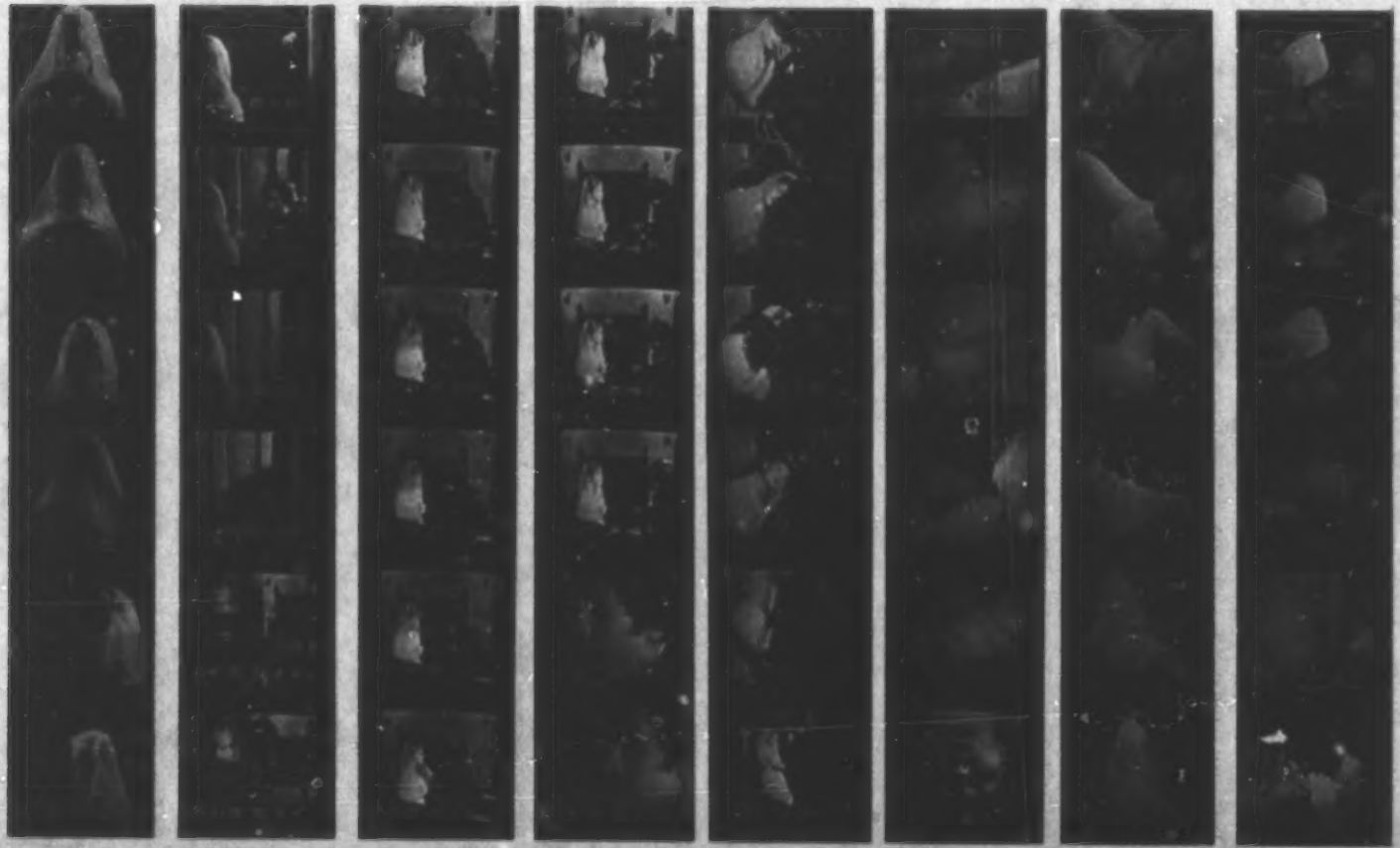
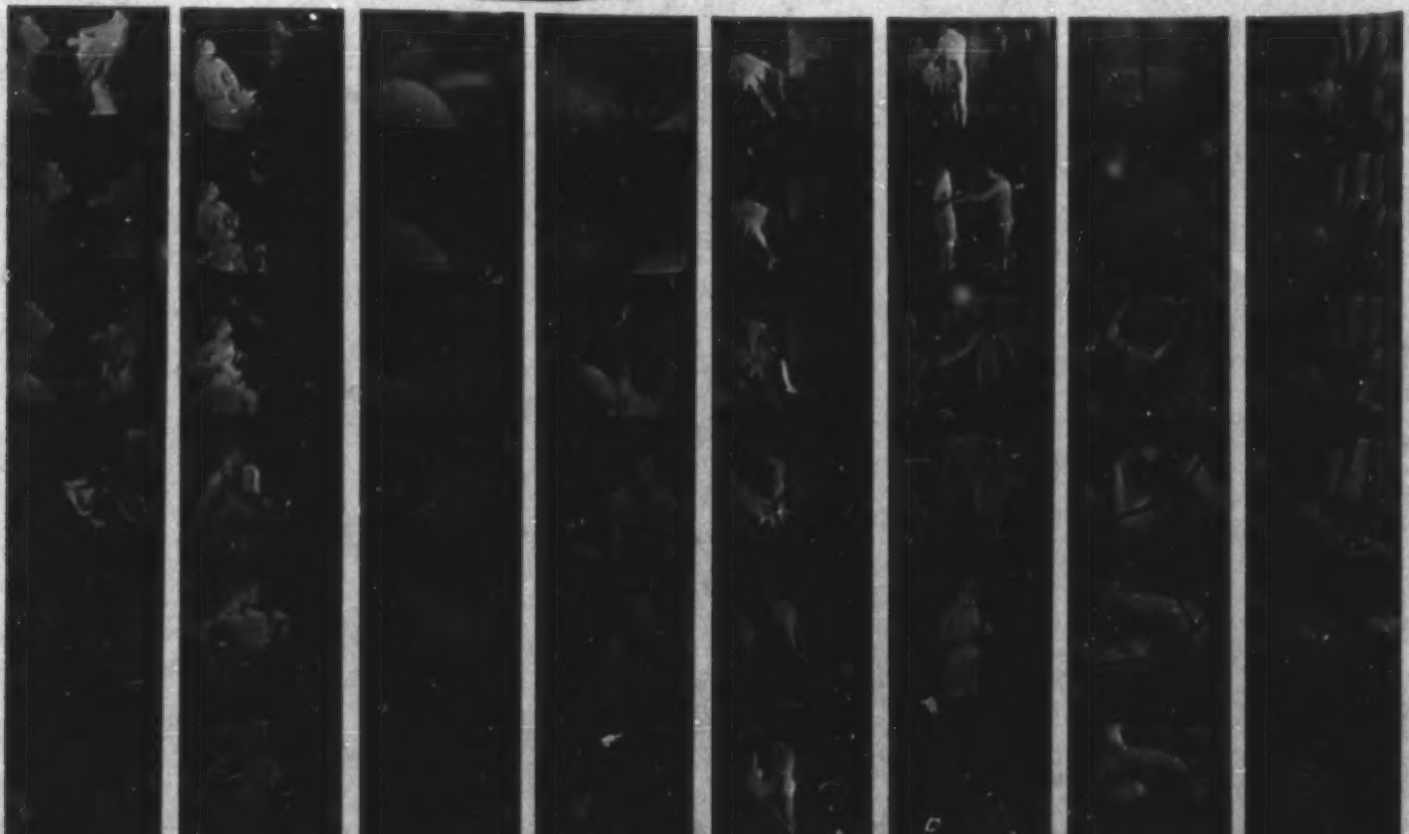
"THE AUTOBIOGRAPHY OF A FLEA"
PART 2 OF 17 PARTS
(05:40-06:53) DEPICT THE YOUNG GIRL AND THE MOTHER LEAVING CHURCH AND THE YOUNG MAN PASSING HER A NOTE WHICH SAID MEET HER IN THE GARDEN. THE YOUNG MALE AND FEMALE ARE IN THE GARDEN. (06:57-08:10) THEY ENGAGE IN AN ACT OF SEXUAL INTERCOURSE ON A BENCH. THE MARRATOR INDICATES THAT THIS IS THE FIRST EXPERIENCE FOR BOTH. (08:14-10:22) A MONK HIDING IN THE BUSHES CATCHES THE PAIR AND CHASTIZES THEM. (10:26-10:54) THE MONK TELLS THE YOUNG FEMALE THAT SHE MUST VISIT HIS QUARTERS WHERE HE WILL ASSIST HER IN GETTING RID OF THIS PARTICULAR SIN. (10:57-11:11) DEPICT THE FEMALE VISITING THE MONK'S QUARTERS.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



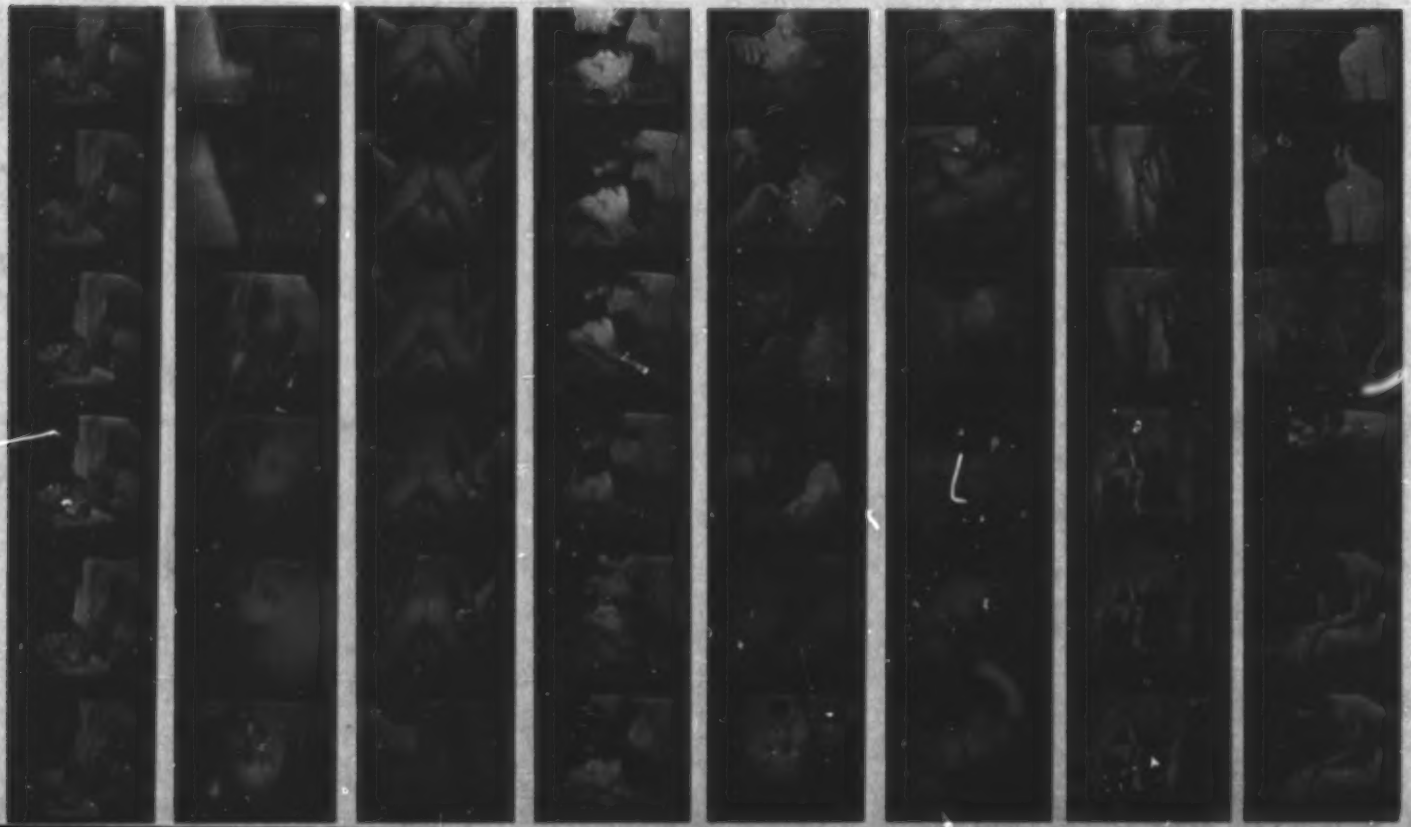
"THE AUTOBIOGRAPHY OF A FLEA"
PART 3 OF 17 PARTS
(11:15-13:48) THE MONK TELLS HER SHE MUST DO EVERYTHING HE SAYS SO SHE WILL BE SAVED. (13:52-13:55) HE KISSES THE 14 YEAR OLD FEMALE. (13:59-15:33) THE MONK ENGAGING IN CUNNILINGUS WITH THE YOUNG FEMALE, LYING ACROSS THE TABLE. (15:36-16:23) THE MONK TELLS THE YOUNG FEMALE THAT SHE CAN MASTURBATE HIM (NOT IN THOSE PARTICULAR TERMS) SHE BEGINS TO MASTURBATE THE MONK'S PENIS. (16:25-16:46) THE YOUNG FEMALE FELLATES THE MONK.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 4 OF 17 PARTS
(16:49-17:10) FELLATIO CONTINUES. (17:14-18:03) THE YOUNG FEMALE DISROBES. (18:06-19:54) THE MONK ENGAGES IN SEXUAL INTERCOURSE WITH THE YOUNG FEMALE. (19:58-21:07) TWO OTHER MONKS ENTER SAYING "MMM--" ONE OF THE MONKS IS JOHN HOLMES. (21:11-22:21) ANOTHER MONK ENGAGES IN SEXUAL INTERCOURSE WITH THE FEMALE ON THE FLOOR

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



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"THE AUTOBIOGRAPHY OF A FLEA"
PART 5 OF 17 PARTS
(22:24-24:57) THE SAME MONK CONTINUES TO ENGAGE IN SEXUAL INTERCOURSE WITH THE FEMALE ON THE FLOOR. (25:01-26:31) THE OTHER MONK, WHO IS ACTOR JOHN HOLMES, APPROACHES THE FEMALE AND ENGAGES IN SEXUAL INTERCOURSE WITH HER. (26:35-27:45) THE TWO MONKS, STANDING NUDE, TALK TO EACH OTHER ABOUT THE OCCURRENCE. ONE MONK TELLS THE FEMALE THAT SHE MUST DO OTHER THINGS. (27:48-27:55) THE FEMALE TURNS AND GOES ON HER KNEES ON THE FLOOR WHILE THE OTHER MONK ENGAGES IN SODOMY WITH HER.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 6 OF 17 PARTS
(27:59-28:51) SODOMY CONTINUES. MONKS DISCUSS FEMALE. (28:54-29:40) SCENE SHIFTS TO THE SAME FEMALE IN A ROOM WITH ONE OF THE MONKS AND HER UNCLE. (29:43-31:03) THE UNCLE DECIDES HE WILL HAVE INTERCOURSE WITH HIS NIECE, THE 14 YEAR OLD FEMALE. THE MONK HELPS THE UNCLE HOLD HER WHILE HE ATTEMPTS TO ENGAGE IN SEXUAL INTERCOURSE. (31:07-31:17) THIS POINT THE FLEA BITES THE PENIS OF THE UNCLE WHICH STOPS THE ACTIVITY. THE FEMALE RUNS OUT OF THE ROOM. (31:21-33:30) THE NIECE IS SLEEPING. THE UNCLE COMES INTO THE BEDROOM AND PULLS THE COVERS BACK EXPOSING HER NUDE BODY. SHE THEN RAPES HIM (SUPPOSEDLY) ON THE BED, AND ENGAGES IN SEXUAL INTERCOURSE WITH THE FEMALE SUPERIOR.

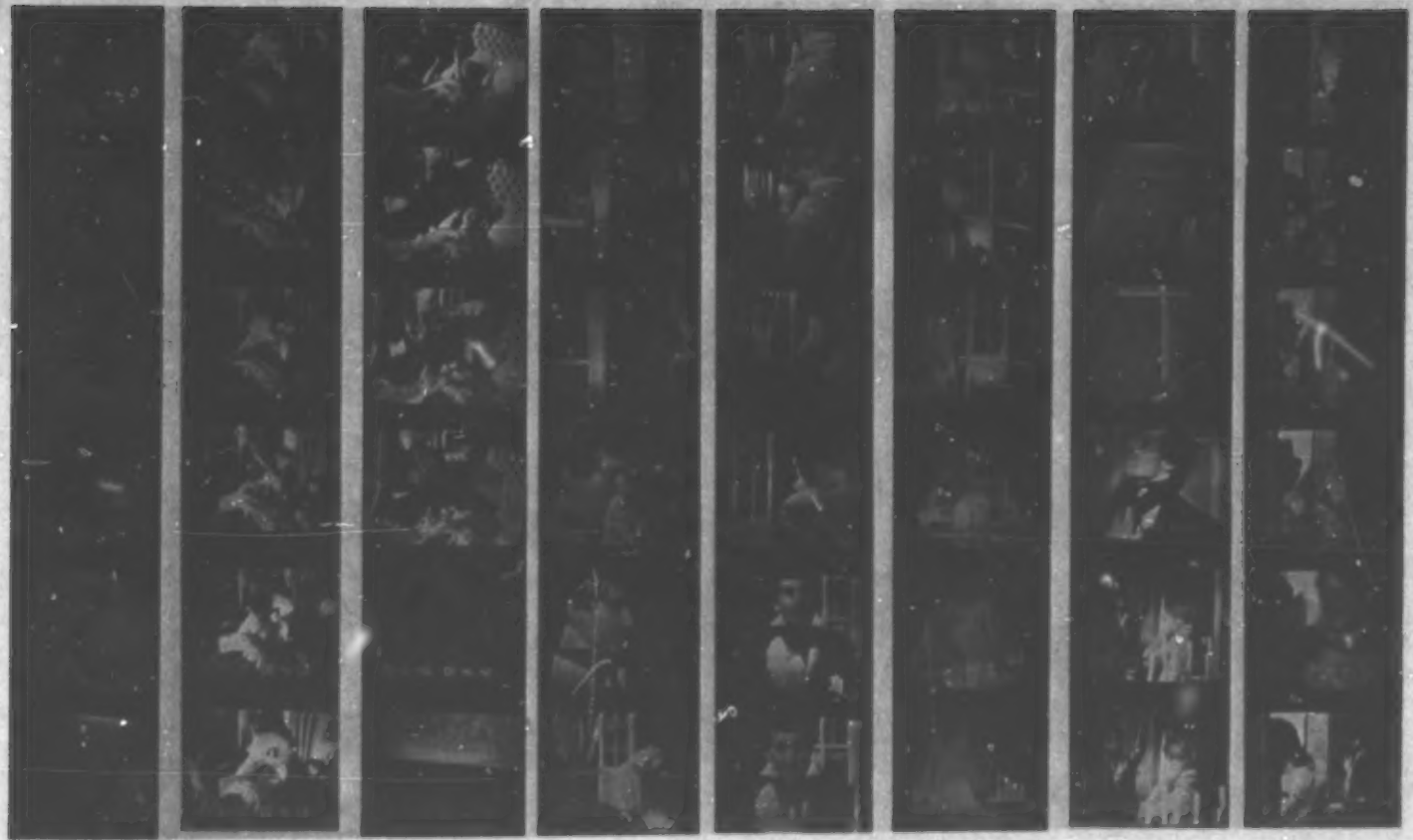
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 7 OF 17 PARTS
(33:33-33:40) INTERCOURSE CONTINUES. (33:44-34:05) THE OUTDOOR SCENE SHOWING TWO YOUNG FEMALES TALKING. ONE OF THE FEMALES IS THE 14 YEAR OLD GIRL, THE OTHER GIRL IS HER FRIEND, WHO IS ALSO SUPPOSEDLY A TEENAGER. (34:09-35:49) THE FRIEND'S FATHER JOINS THEM IN DANCING AND PLAYING ON A LAWN. (35:53-38:47) THE SCENE SHIFTS TO THE ORIGINAL 14 YEAR OLD IN THE NUDE WITH HER UNCLE AND A MONK DRINKING CHAMPAGNE WITH STRAWBERRIES. THEY ARE TALKING ABOUT A PLAN TO TRICK THE FATHER OF THE OTHER YOUNG GIRL INTO HAVING SEX WITH HIS DAUGHTER WITHOUT HIM KNOWING IT. (38:51-39:05) DEPICTS THE WIFE OF THE UNCLE OF THE FIRST YOUNG GIRL SITTING IN THE BEDROOM, DRINKING COFFEE OR COCOA, AND PREPARING TO GO TO BED.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

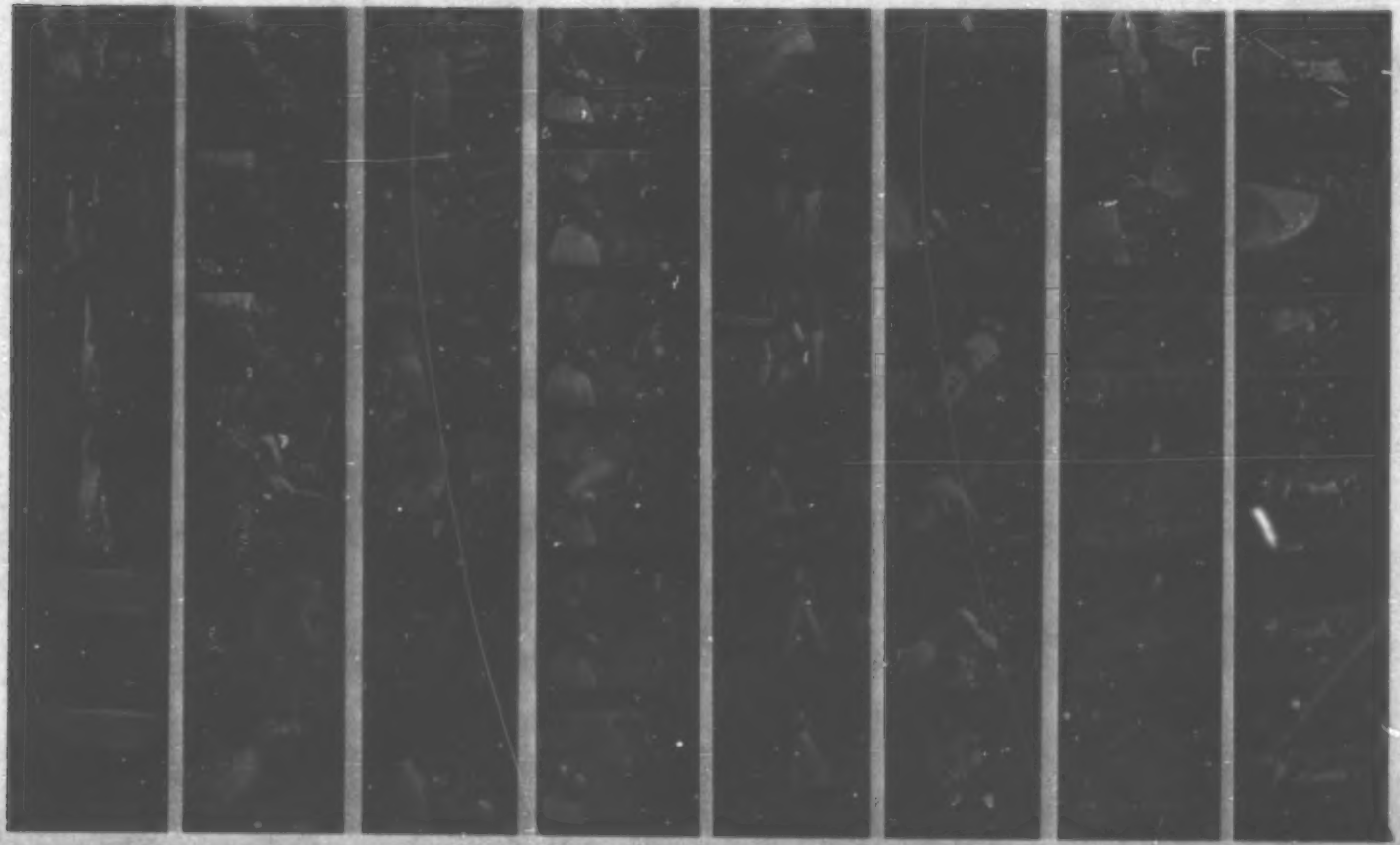
"THE AUTOBIOGRAPHY OF A FLEA"
PART 8 OF 17 PARTS
(39:09-41:56) SHE GETS IN BED AS "MONK" JOHN HOLMES CLIMBS UP THE BALCONY IN SEARCH OF THE 14 YEAR OLD DAUGHTER BUT UNWITTINGLY CLIMBS INTO THE BEDROOM OF THE WIFE OF THE GIRL'S UNCLE. (41:59-44:40) HE GETS INTO BED WITH HER AND PERFORMS CUNNILINGUS ON HER AND SEXUAL INTERCOURSE.

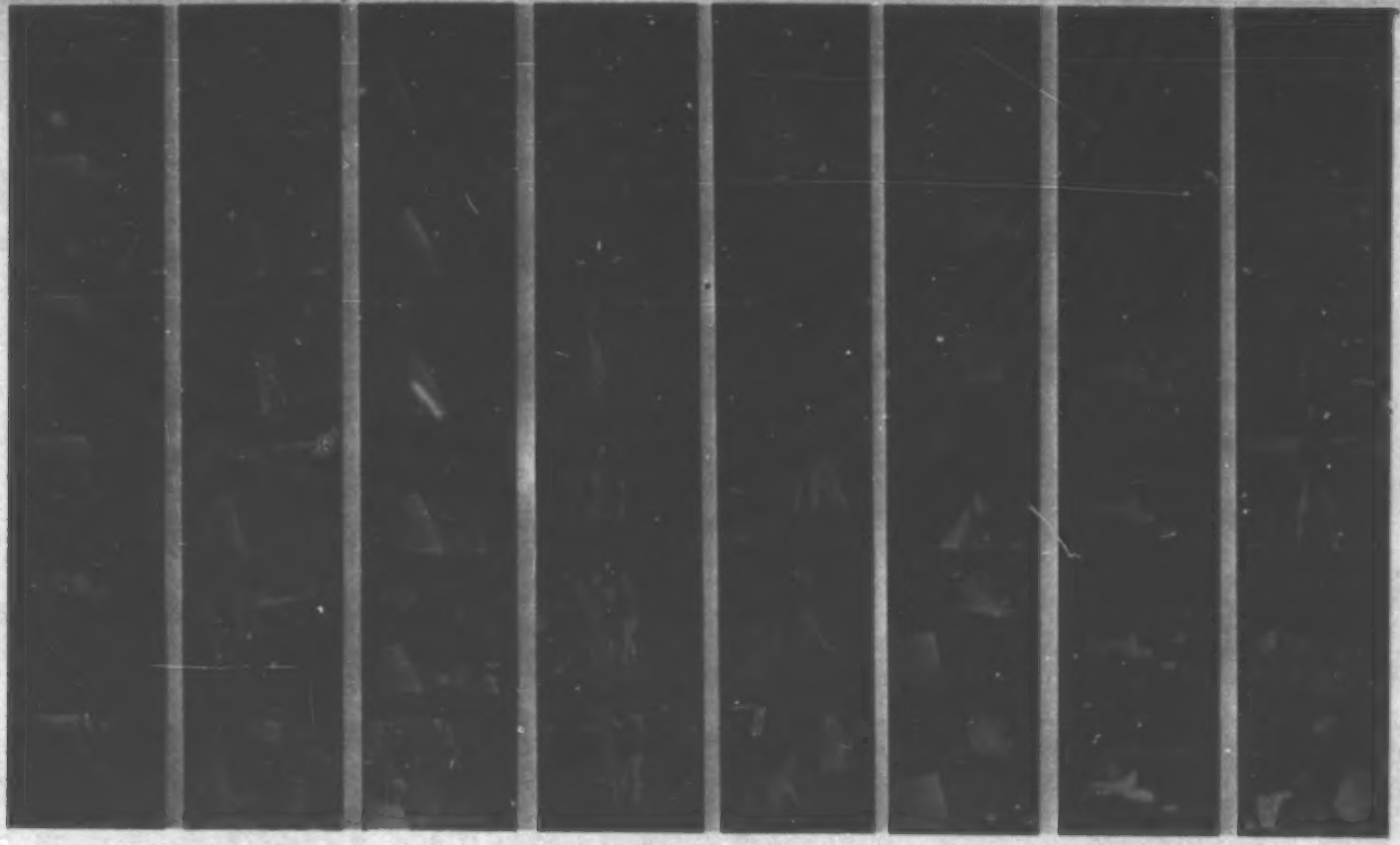
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 9 OF 17 PARTS
(44:43-46:00) HE ENGAGES IN SEXUAL INTERCOURSE WITH HER. (46:03-46:21) THE HUSBAND (UNCLE) OF THE WOMAN ENTERS AND CHASES JOHN HOLMES AROUND THE BED. JOHN HOLMES JUMPS OUT THE WINDOW. (46:24-46:42) THE UNCLE RETURNS TO HIS WIFE'S BEDSIDE. (46:45-50:14) SCENE SHIFTS TO THE SECOND YOUNG GIRL'S HOUSE WHERE THE FIRST GIRL MEETS THE FATHER OF HER GIRLFRIEND, THEY FLIRT AND TALK.

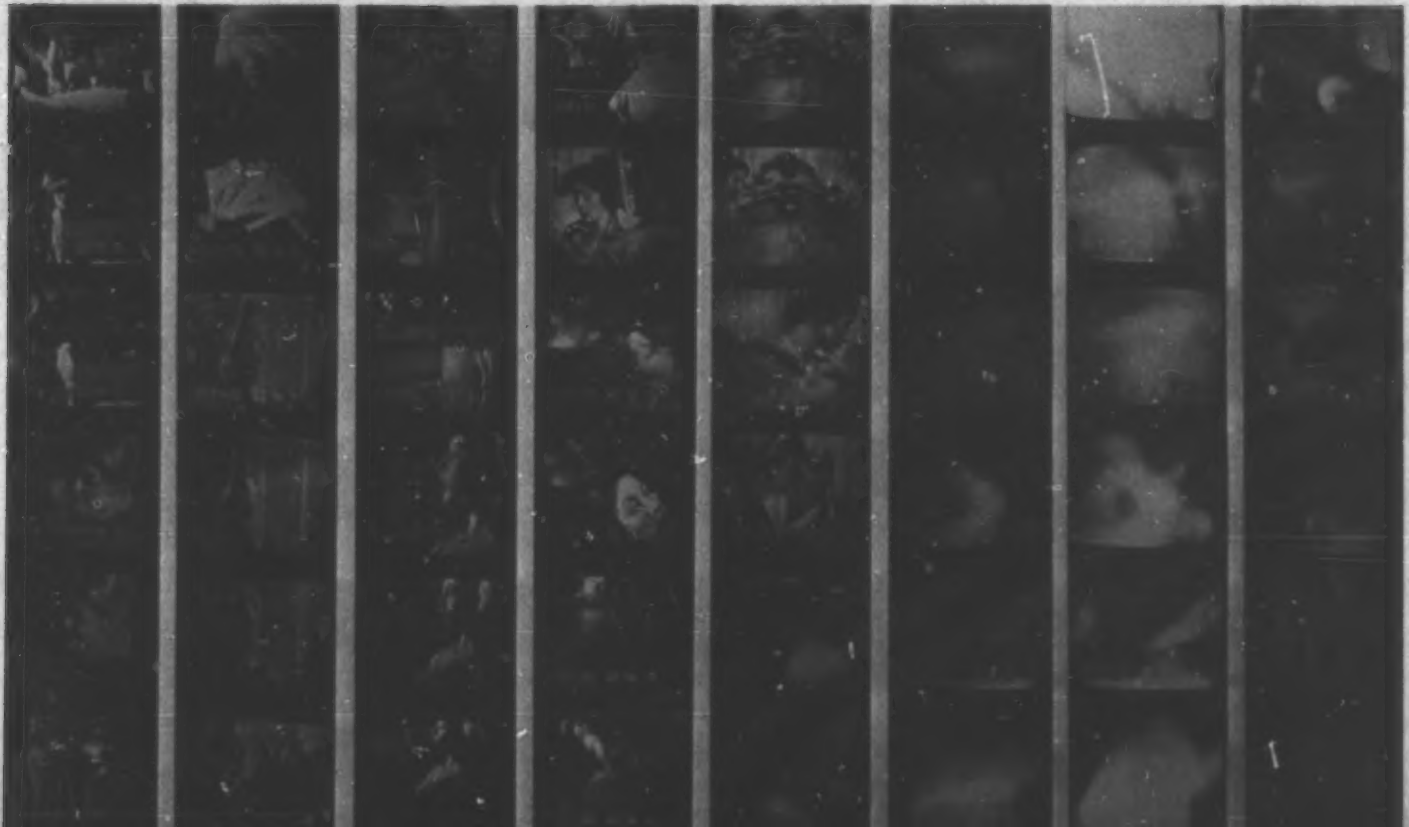
"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

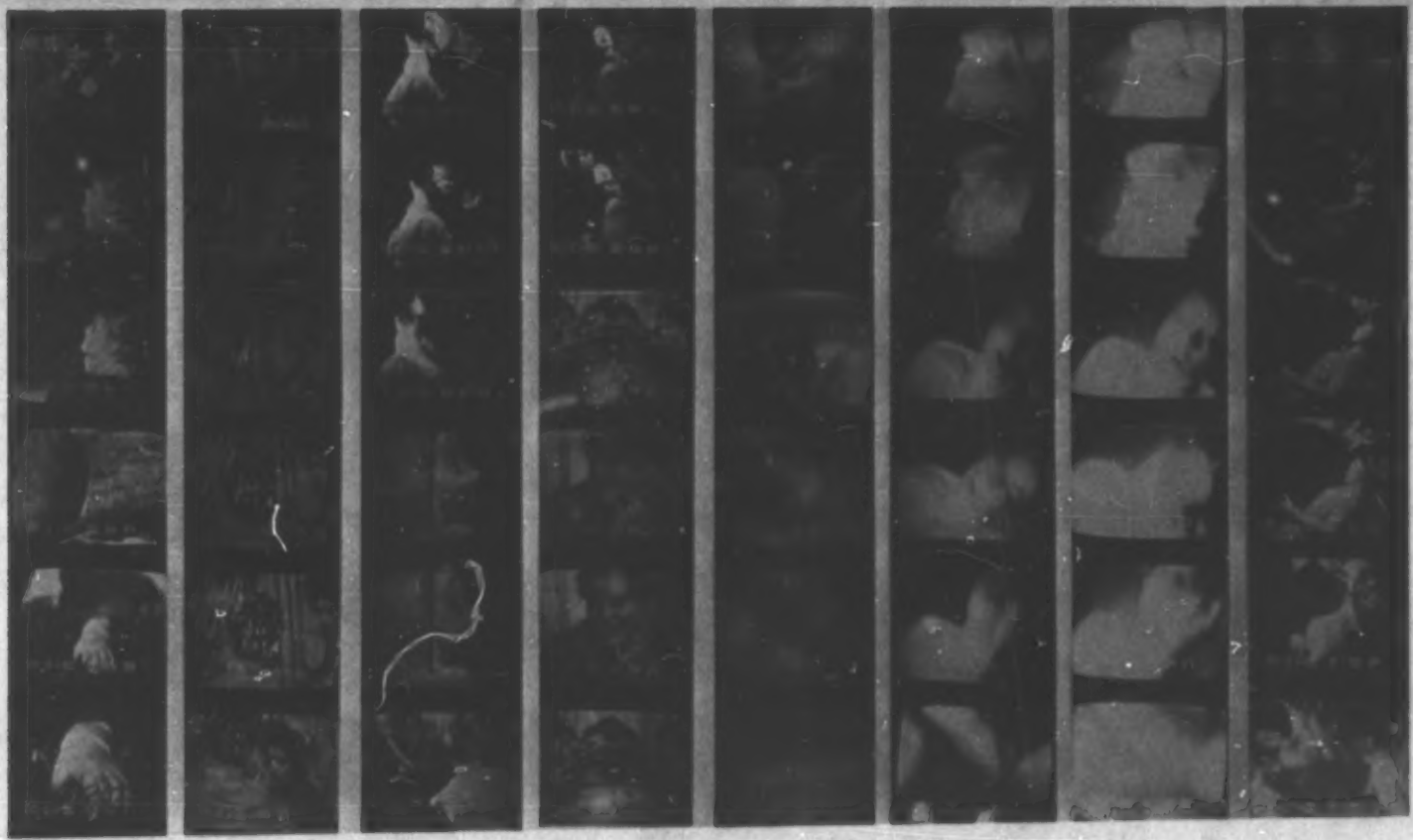




"THE AUTOBIOGRAPHY OF A FLEA"
PART 10 OF 17 PARTS
(50:18-50:28) IS THE ENDING OF THE MEETING BETWEEN THE YOUNG GIRL'S FATHER AND HER GIRLFRIEND. (50:32-51:07) AN OUTDOOR SCENE SHOWING THE 14 YEAR OLD GIRL WALKING IN A FIELD. (51:10-51:35) DEPICT HER LOOKING ON A BANK AND SEEING A MALE MASTURBATE. THE MALE SEES HER AND PULLS HIS PANTS UP. (51:38-52:51) HE TALKS TO HER AND TELLS HER HE WOULD LIKE TO HAVE INTERCOURSE WITH HER USING THE WORD "FUCK." (52:55-55:49) SHE BEGINS TO HAVE SEXUAL INTERCOURSE WITH HIM ON THE GRASS AS THE YOUNG MAN'S FATHER ENTERS THE SCENE AND URGES HIM ON.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).





"THE AUTOBIOGRAPHY OF A FLEA"
PART 11 OF 17 PARTS
(55:53-56:38) THE INTERCOURSE BETWEEN THE SON AND THE FEMALE ON THE GRASS CONTINUES WHILE THE FATHER URGES THE SON ON. (56:41-60:42) THE SCENE SHIFTS TO THE YOUNG 14 YEAR OLD FEMALE AND HER GIRLFRIEND TALKING ABOUT SEX. FLASHBACK SCENES OF GIRLFRIEND AND ONE OF THE MONKS TOGETHER.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

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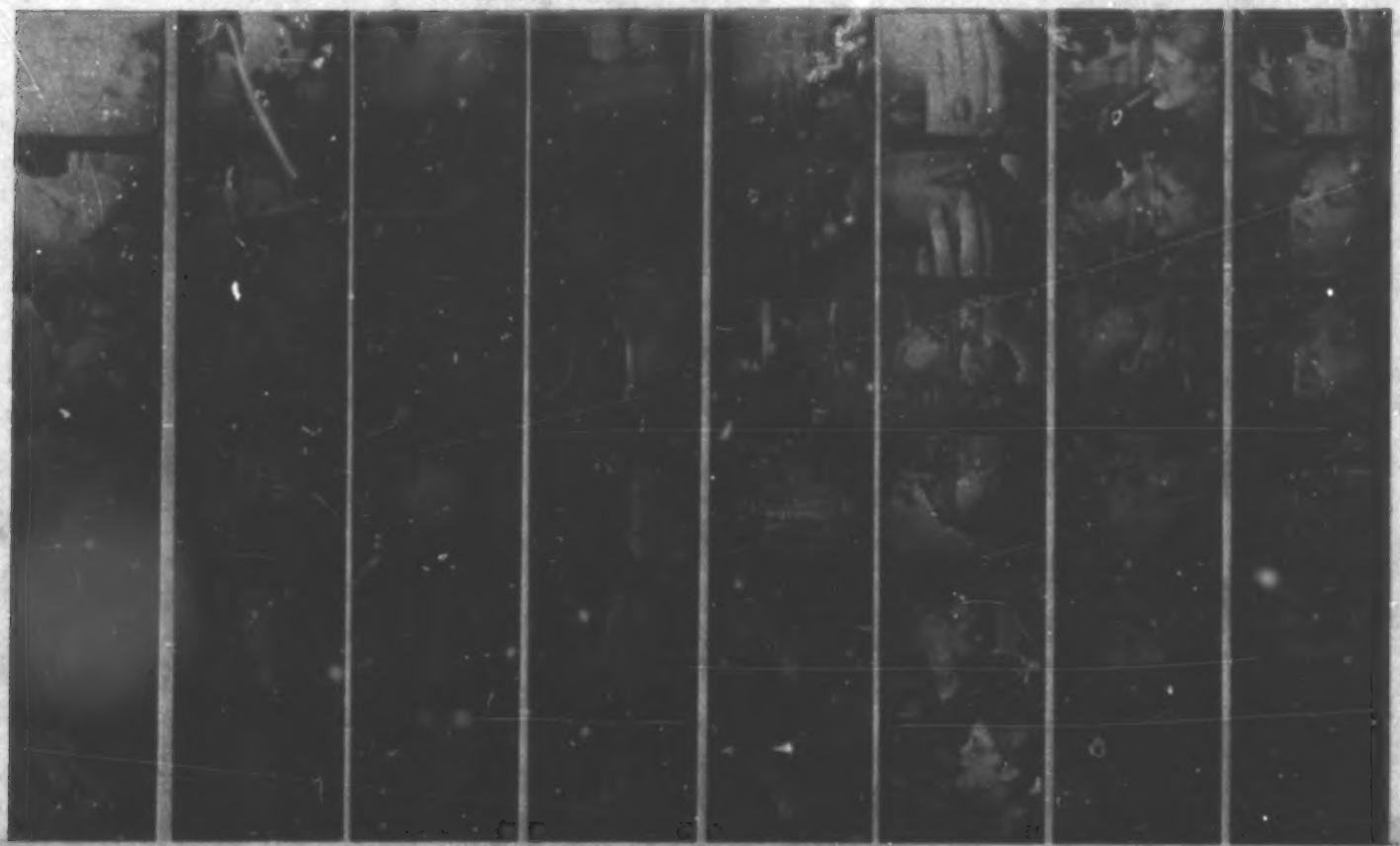
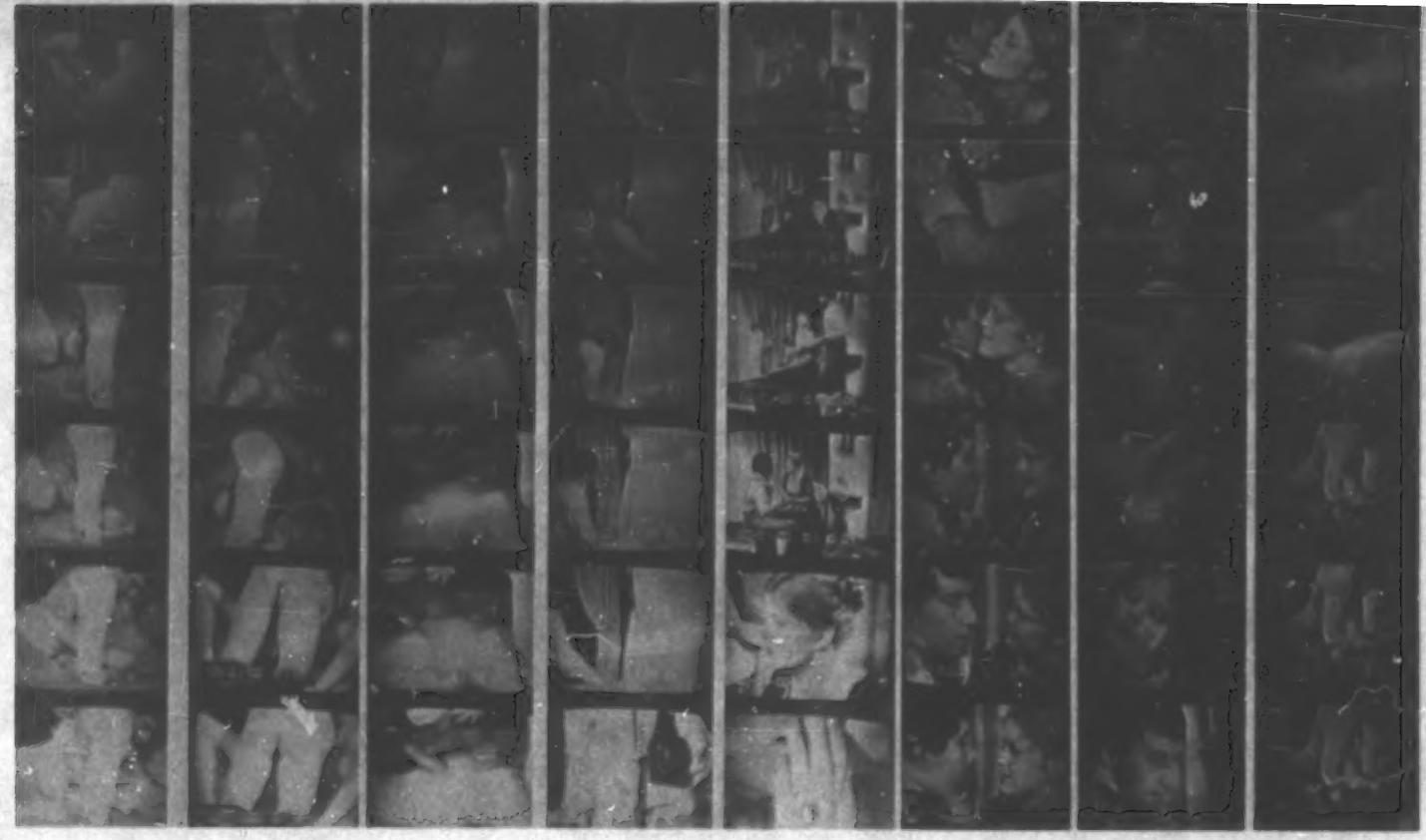
"THE AUTOBIOGRAPHY OF A FLEA"
PART 12 OF 17 PARTS
(60:46-61:52) FLASHBACK SCENES OF GIRLFRIEND AND MONK. THEY DEPICT FURTHER CONVERSATION BETWEEN THE TWO GIRLS. THE 14 YEAR OLD TELLING THE GIRLFRIEND THAT SHE SHOULD HAVE SEX. (61:56-62:51) UNCLE'S HOUSE. THEY HAVE ARRANGED FOR THE FATHER OF THE GIRL TO HAVE SEX WITH THE GIRL. HE DOES NOT REALIZE IT WILL BE HIS DAUGHTER. (62:55-64:23) DEPICTS THE DAUGHTER LYING ON A BED WITH HER HEAD COVERED. THE FATHER ENTERS THE ROOM AND BEGINS TO MASTURBATE HIS DAUGHTER NOT REALIZING THAT IT IS HIS DAUGHTER. (64:27-66:10) DEPICTS THE FATHER STILL MASTURBATING HIS DAUGHTER, HER HEAD IS COVERED. HE DISROBES AND ENGAGES IN SEXUAL INTERCOURSE WITH HER. (66:13-66:35) 14 YEAR OLD FEMALE IS WATCHING FROM BEHIND CURTAIN.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



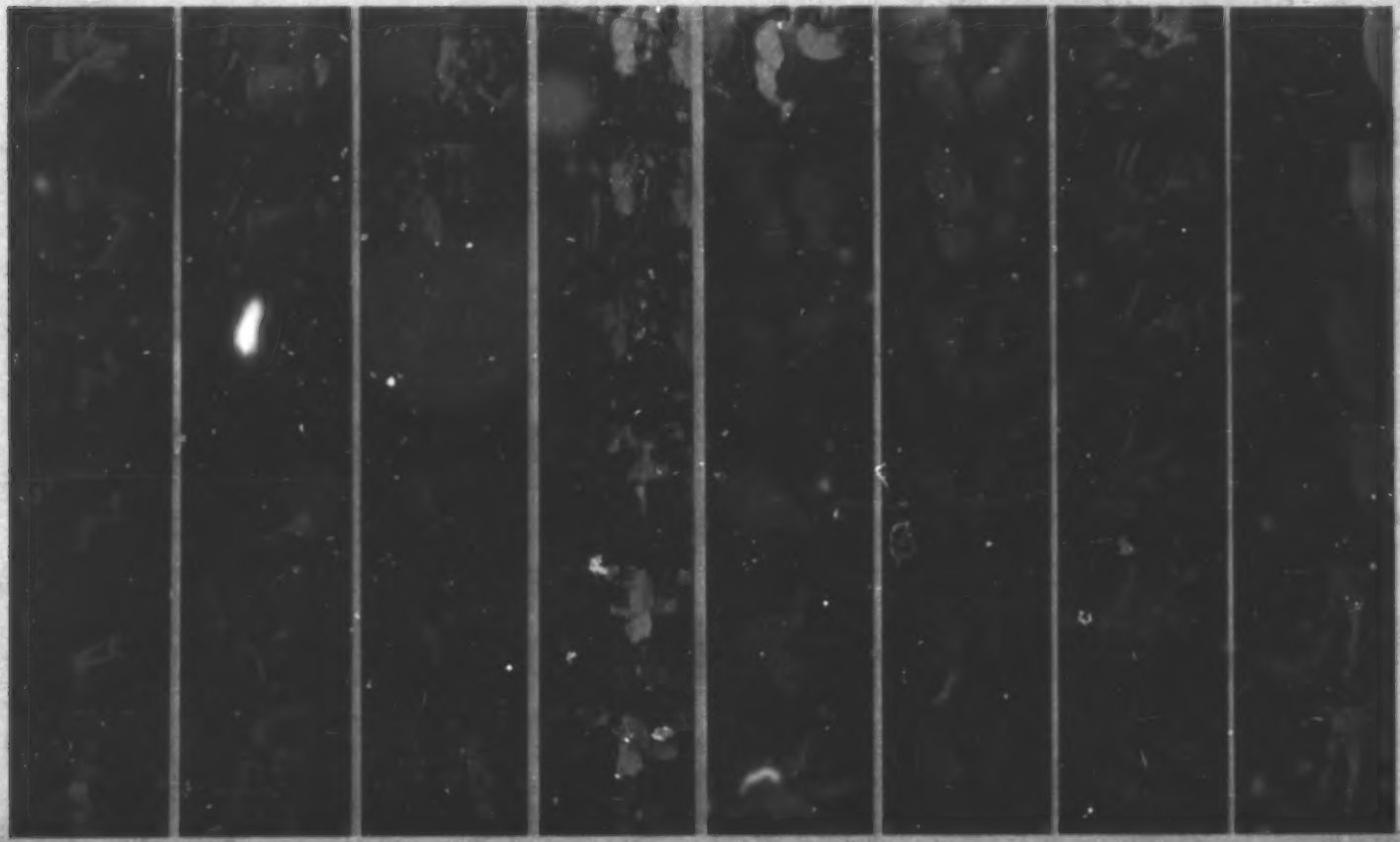


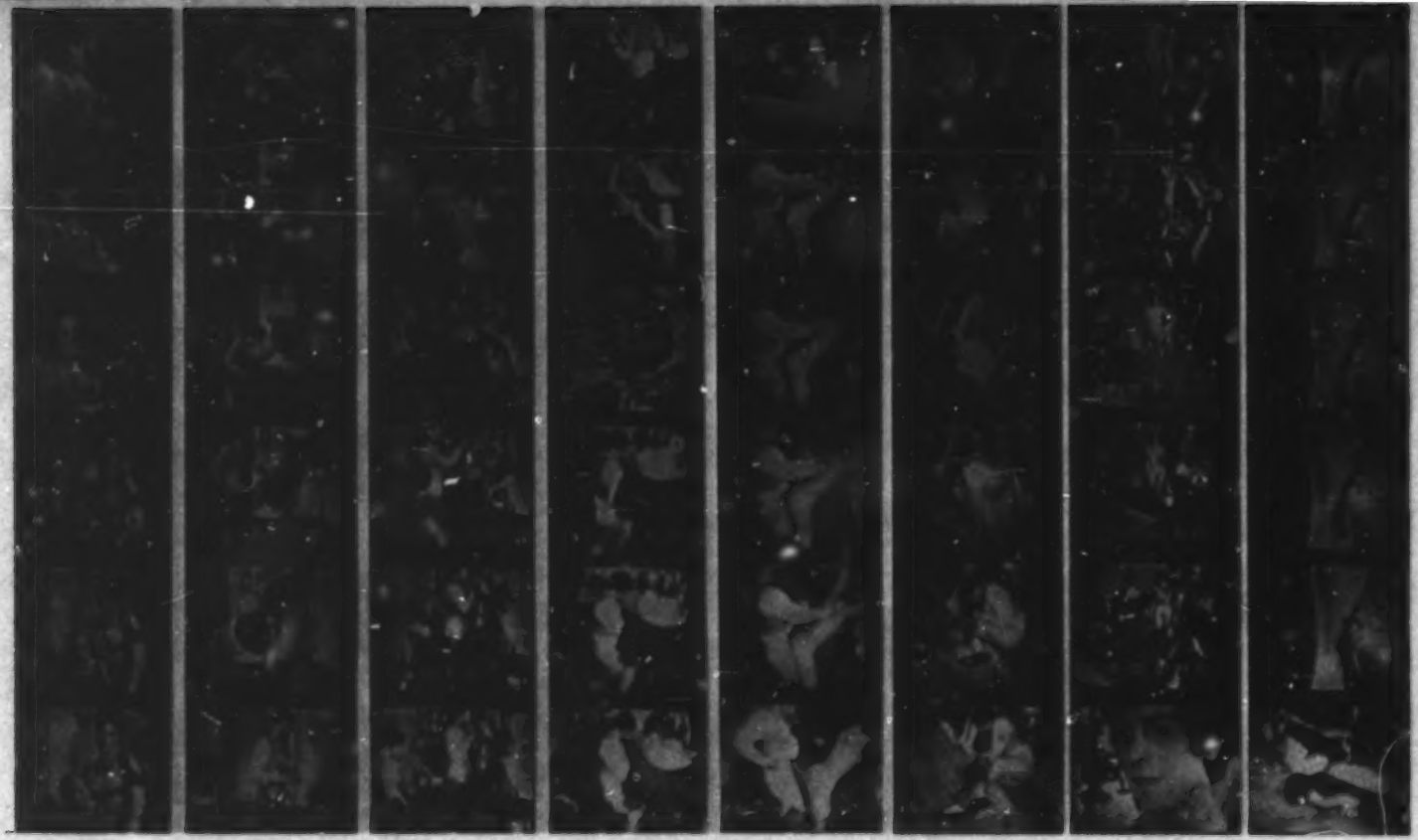
"THE AUTOBIOGRAPHY OF A FLEA"
PART 13 OF 17 PARTS
(66:39-68:51) THE FATHER CONTINUES TO ENGAGE IN SEXUAL INTERCOURSE WITH HIS DAUGHTER. HE REMOVES HIS PENIS FROM HER VAGINA AND EJACULATES ON HER STOMACH. (68:55-69:47) MALE LOOKS UP TO SEE 14 YEAR OLD FEMALE WATCHING. SHE LEAVES AND HE FOLLOWS. (69:50-70:27) SHE THEN MEETS THE FATHER IN ANOTHER ROOM, TELLS HIM HE WAS ENGAGING IN INTERCOURSE WITH HIS DAUGHTER. (70:31-72:28) FEMALE CONTINUES TO TALK ABOUT HOW THE FATHER ENGAGED IN INTERCOURSE WITH HIS OWN DAUGHTER. HE THEN ENGAGES IN INTERCOURSE WITH THE 14 YEAR OLD FEMALE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 14 OF 17 PARTS
(72:32-74:44) THE FATHER OF THE GIRL CONTINUES TO HAVE SEXUAL INTERCOURSE WITH THE 14 YEAR OLD FEMALE. (74:48-76:27) THE UNCLE AND THE MONK BRING THE DAUGHTER OF THE MAN, LIE HER ON THE FLOOR. (76:31-78:21) THE MONK THEN BEGINS TO HAVE INTERCOURSE WITH HER WHILE HER FATHER WATCHES AND MASTURBATES.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).





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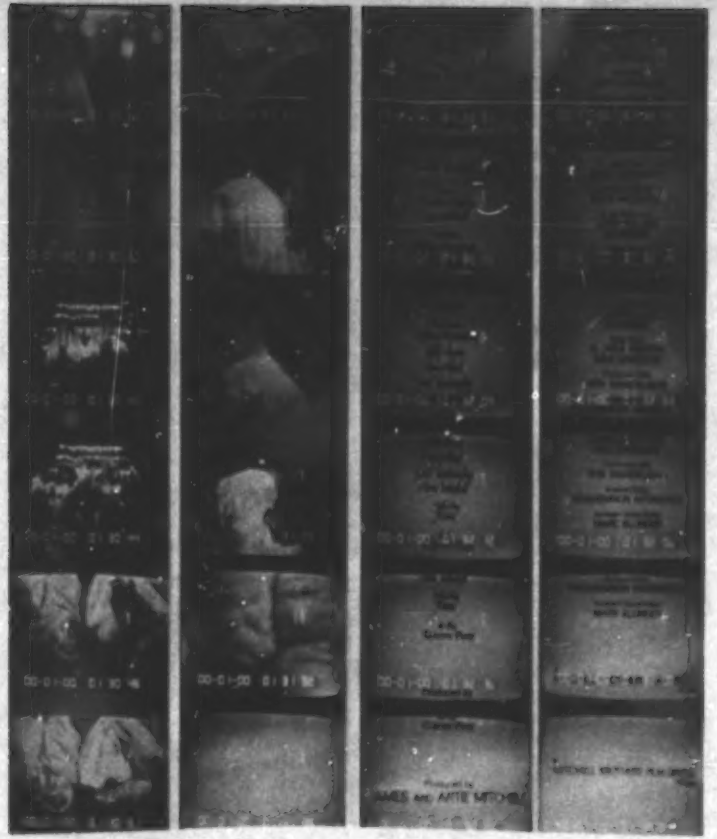
"THE AUTOBIOGRAPHY OF A FLEA"
PART 15 OF 17 PARTS
(78:25-78:43) THE FATHER CONTINUES TO MASTURBATE WHILE HE WATCHES HIS DAUGHTER ENGAGING IN SEXUAL INTERCOURSE WITH THE MONK. (78:47-79:28) THE 14 YEAR OLD ENGAGES IN SEXUAL INTERCOURSE WITH HER UNCLE IN THE SAME ROOM. (79:31-80:48) ACTIVITY CONTINUES. (80:52-82:17) DEPICTS THE FATHER ENGAGING IN SEXUAL INTERCOURSE WITH HIS DAUGHTER AND HE NOW KNOWS IT IS HIS DAUGHTER. THEY ENGAGE IN SEXUAL INTERCOURSE WHILE SHE LEANS AGAINST THE FIREPLACE. SEXUAL INTERCOURSE IS FROM THE REAR POSITION. (82:20-83:08) THE FATHER HAS A HEART ATTACK AND KEELS OVER. HE FALLS ON THE FLOOR AND THE OTHER PEOPLE IN THE ROOM DON'T REALIZE HE IS DEAD. (83:12-84:14) THE FATHER LIES DEAD ON THE FLOOR WHILE THE OTHER PEOPLE ENGAGE IN SEXUAL INTERCOURSE.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).

"THE AUTOBIOGRAPHY OF A FLEA"
PART 16 OF 17 PARTS
(84:18-85:46) ACTIVITY CONTINUES. (85:50-86:30) THEY REALIZE THAT THE FATHER HAS DIED. (86:34-87:07) THE SCENE SHIFTS TO WHERE THE TWO FEMALES ARE IN BED TALKING. (87:11-88:43) "MONK" HOLMES ENTERS THE ROOM AND DISROBES AND GETS INTO BED WITH THE TWO FEMALES. THEY ALL GET UNDER THE COVERS. (88:46-89:56) DEPICTS A SHIFT SHOWING THE WIFE OF THE DEAD HUSBAND WHO IS NOW SUPPOSEDLY A MENTAL CASE. (90:00-90:07) THE SCENE AGAIN SHIFTS TO THE TWO YOUNG FEMALES IN A CHURCH WITH VEILS ON. THEY ARE APPARENTLY TAKING VOWS OF CHASTITY, ENTERING A MONASTERY TO LIVE WITH THE MONKS.

"THE AUTOBIOGRAPHY OF A FLEA": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46834) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: OCT. 12, 1976).



"THE AUTOBIOGRAPHY OF A FLEA"
PART 17 OF 17 PARTS
(90:11-91:35) DEPICT THE END OF THE FEATURE. THE FLEA NARRATES THAT HE HAS LEFT THE VAGINA OF THE 14 YEAR OLD AND HE HAS ENTERED THE VAGINA OF ANOTHER FEMALE. (91:39-93:04) CREDITS. THE END.

APPENDIX D

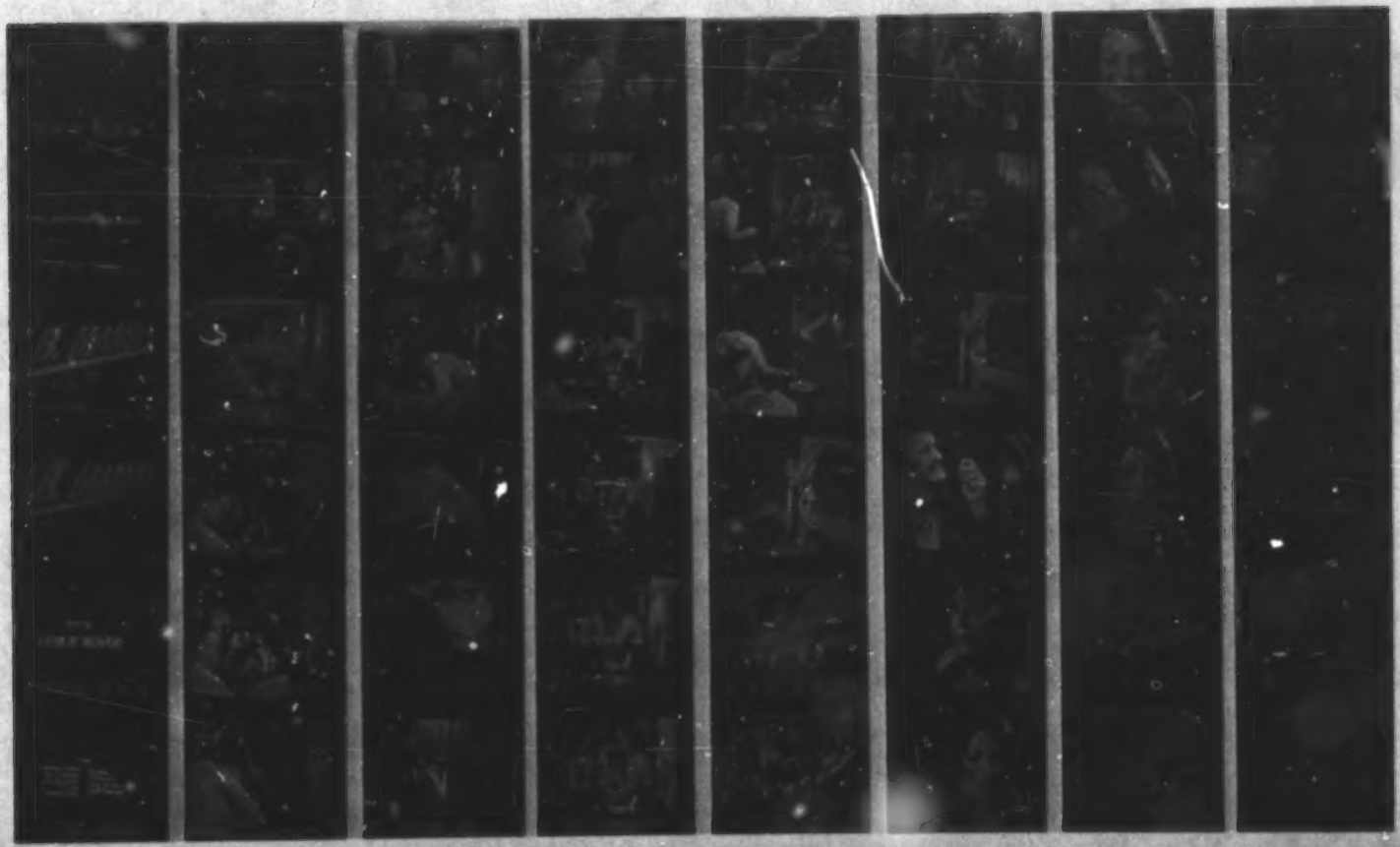
TIME-MOTION STUDY* OF THE FILM

"C.B. MAMAS"

The motion picture film "C.B. Mamas" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 11, 1976.

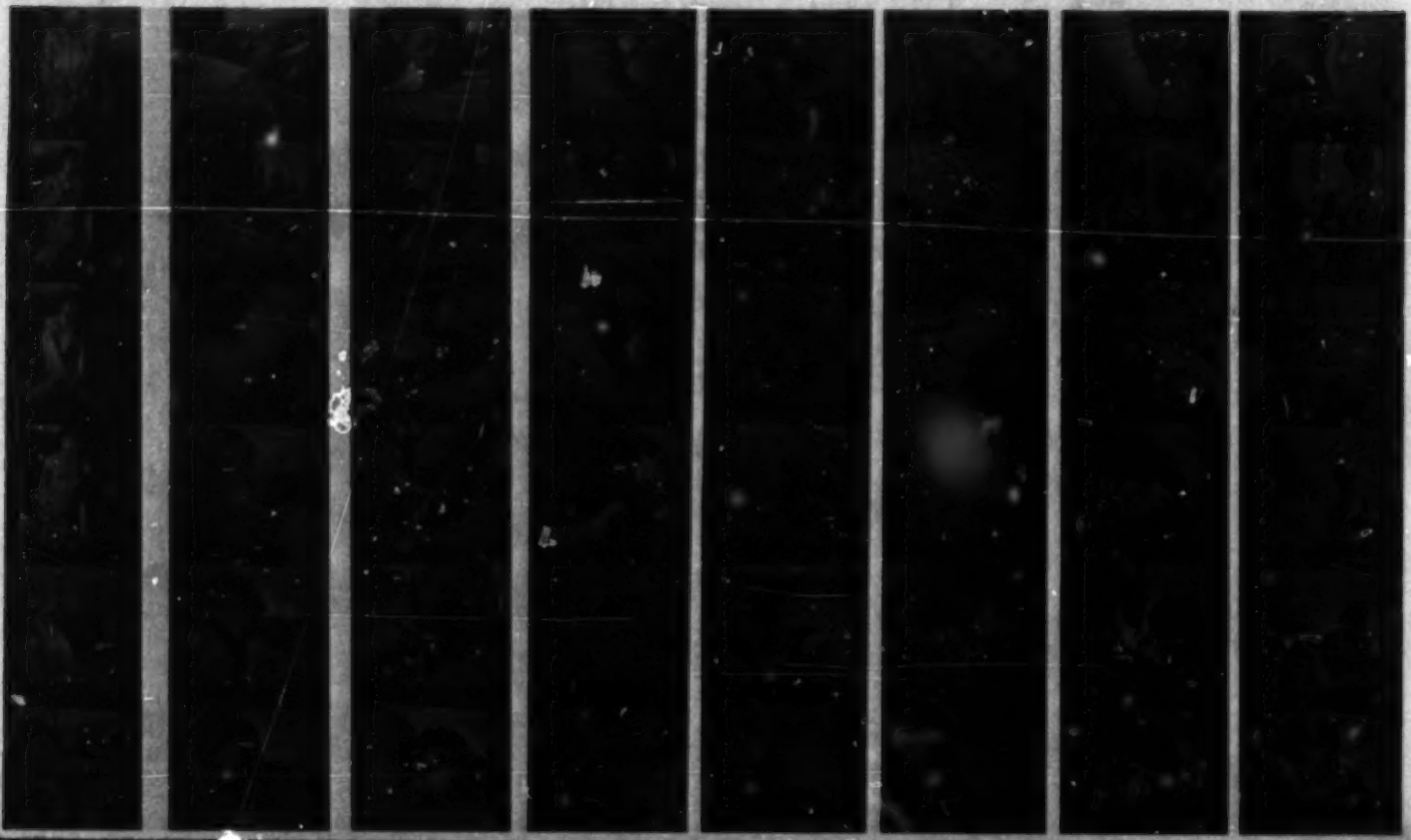
* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



"C.B. MAMAS"
PART 1 OF 10 PARTS
(00:04-00:32) CREDITS. (00:35-01:17) INTRODUCTORY SCENES. (00:56-1:03) HOUSEWIFE LESLIE IN HOUSEROBE AND CURLERS PHONES GIRLFRIEND TO TELL HER THAT SHE WILL HAVE EVERYTHING READY IN 10 MINUTES. (1:07-1:17) LESLIE SAYS "GOOD-BYE" TO HER HUSBAND. (1:21-1:59) AND HASTELY CLEANS UP HOUSE FOR MEETING. (2:03-3:13) FEMALES GATHER FOR PARTY. (3:16-3:37) FOUR FEMALES MEET AND BROADCAST AN INVITATION TO MALES OVER "C.B." EQUIPMENT. (3:41-4:40) FOUR MALES RESPOND. (4:43-5:36) NAVY PILOT JUMPS FROM AN AIRPLANE. FIRST FEMALE, ON BED, EXPOSES HERSELF AS MALE IN PILOT'S UNIFORM WATCHES.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



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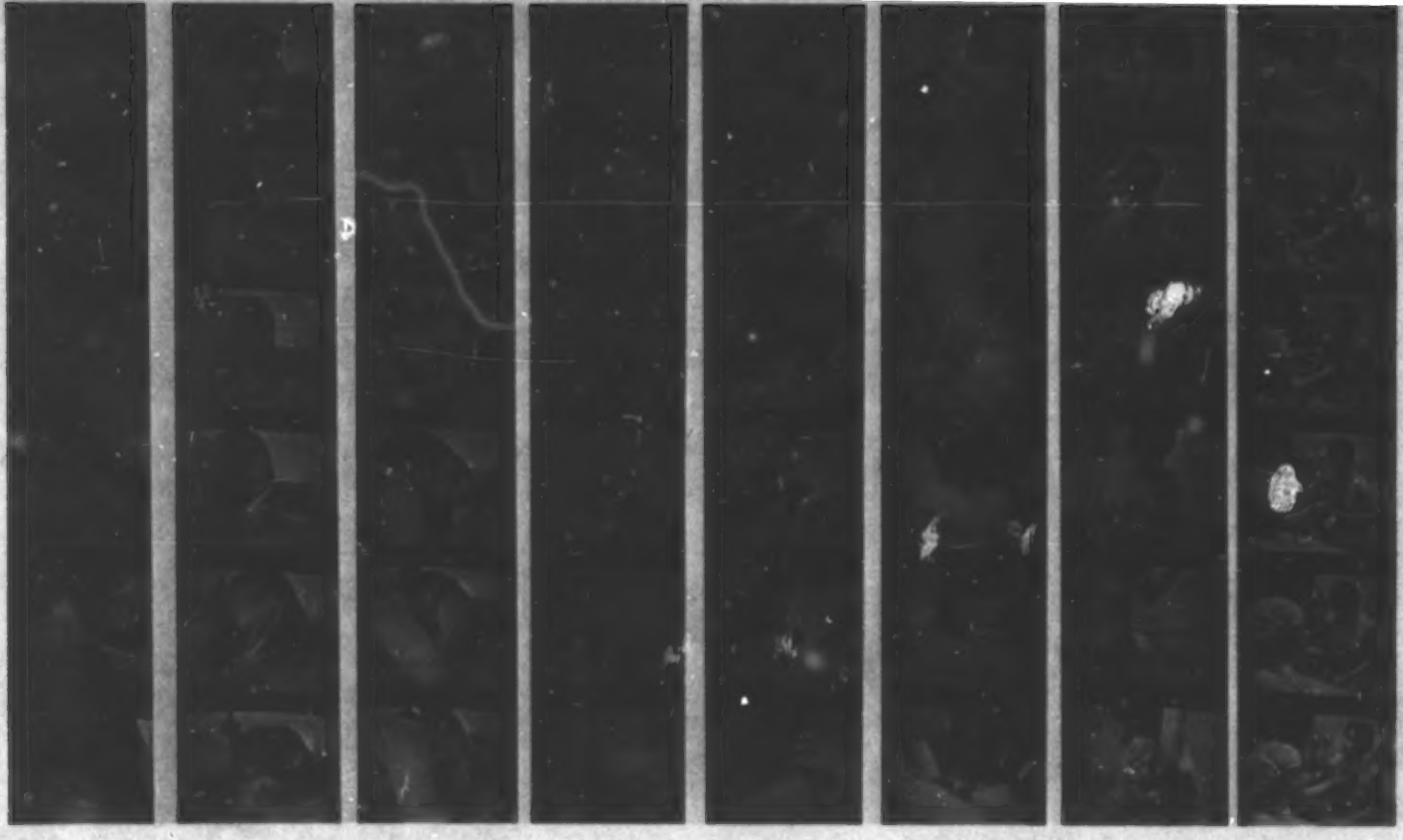
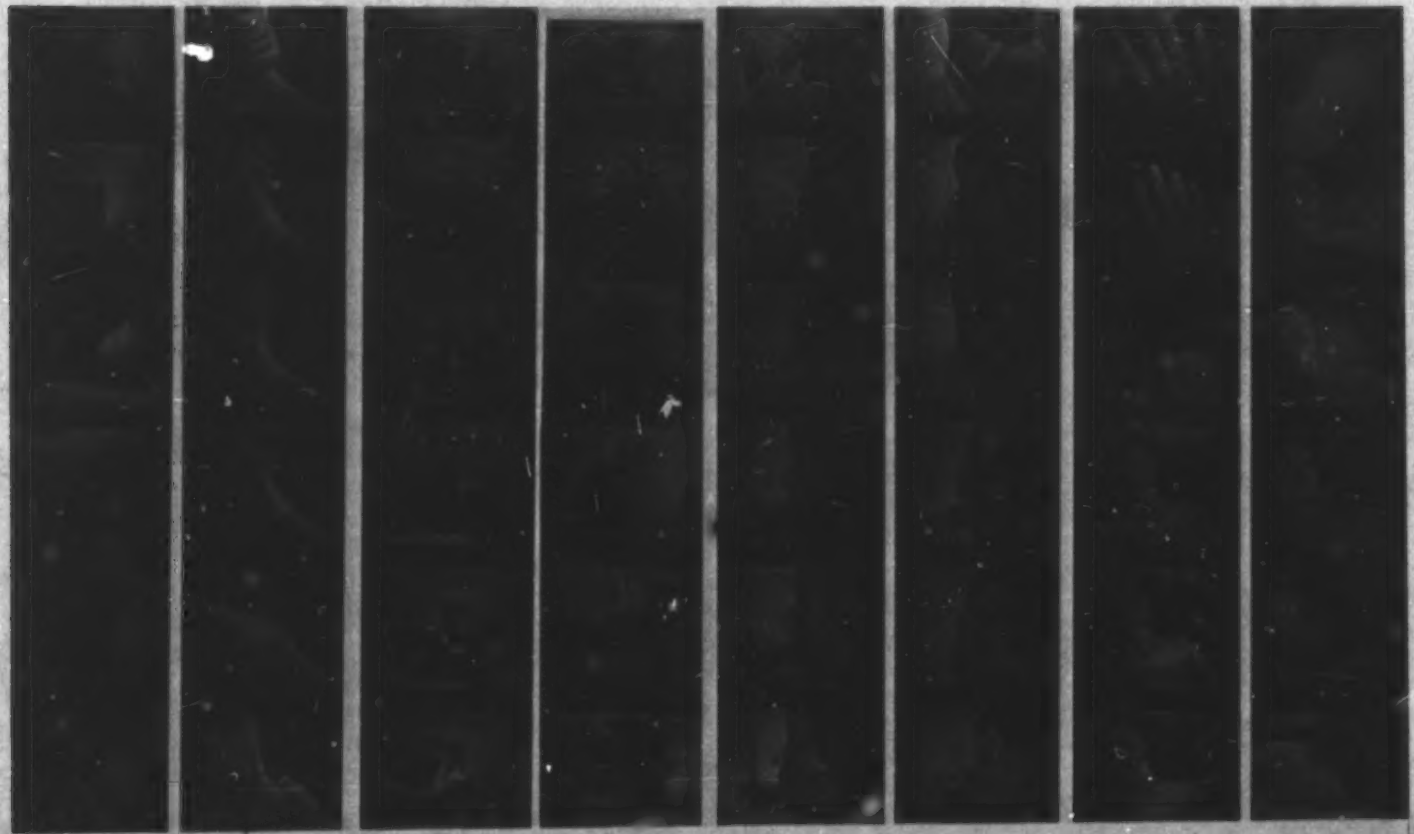
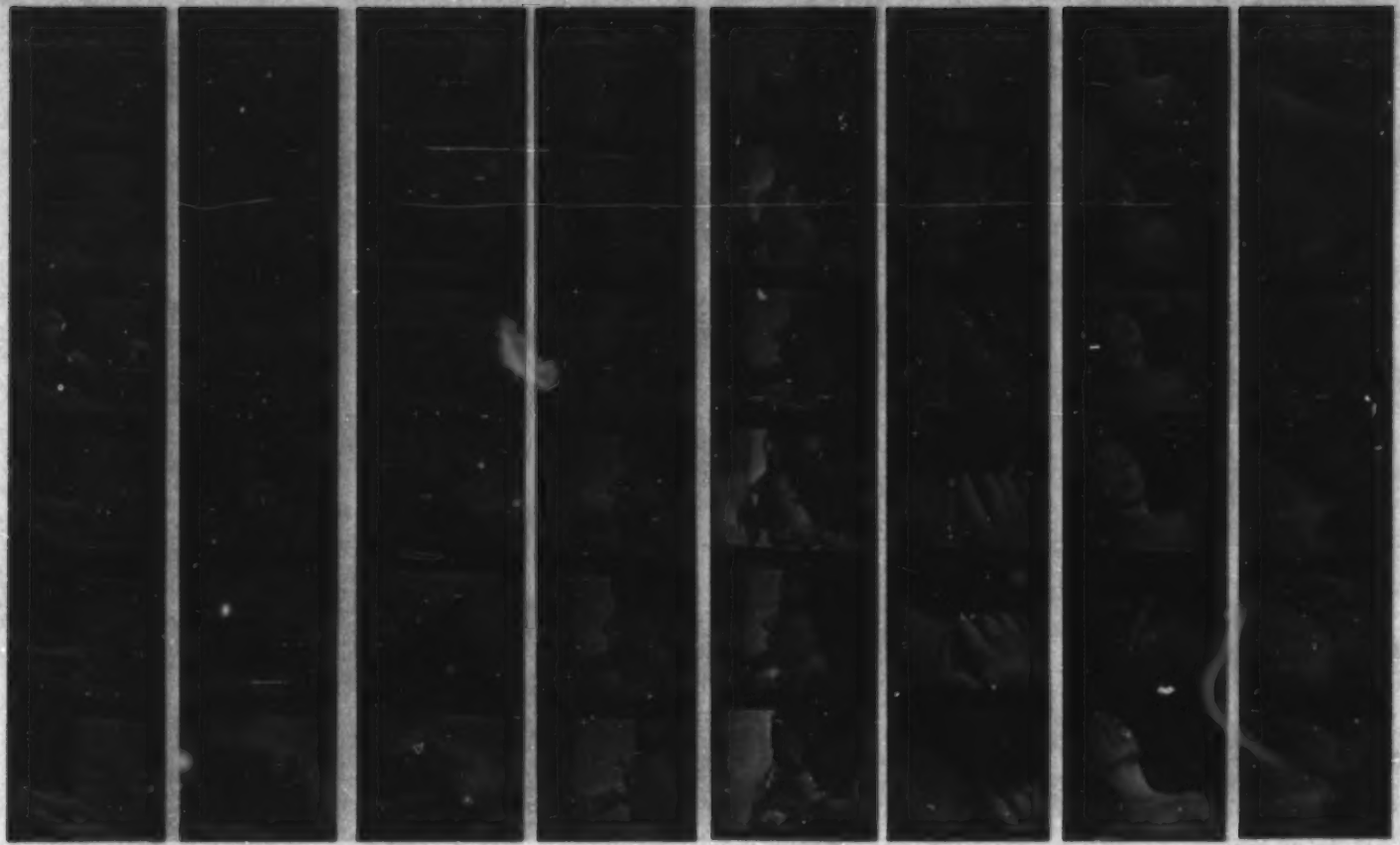


"C.B. MAMAS"
PART 2 OF 10 PARTS
(5:40-5:57) PILOT UNDRESSES AND PERFORMS CUNNILINGUS. (6:01-6:11) SEXUAL INTERCOURSE. (6:14-7:55) FEMALE PERFORMS FELLATIO ON PILOT. (7:59-9:51) FEMALE MOUNTS PILOT FOR SEXUAL INTERCOURSE. (9:55-11:11) SECOND MALE INVITES SECOND FEMALE "ITS TIME TO PLAY RUBBER DUCKY." MALE UNDRESSES FEMALE IN BATHROOM.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).





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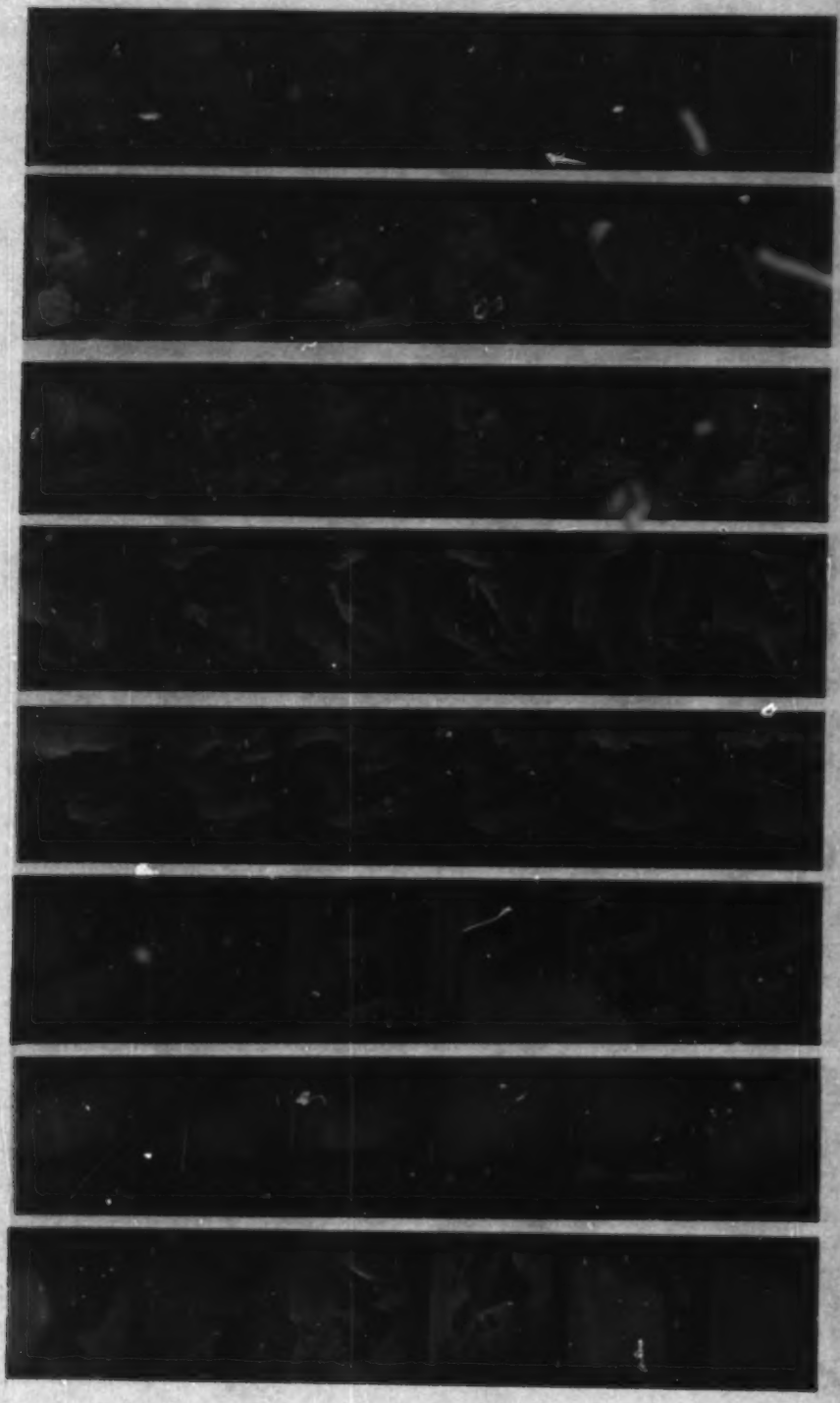
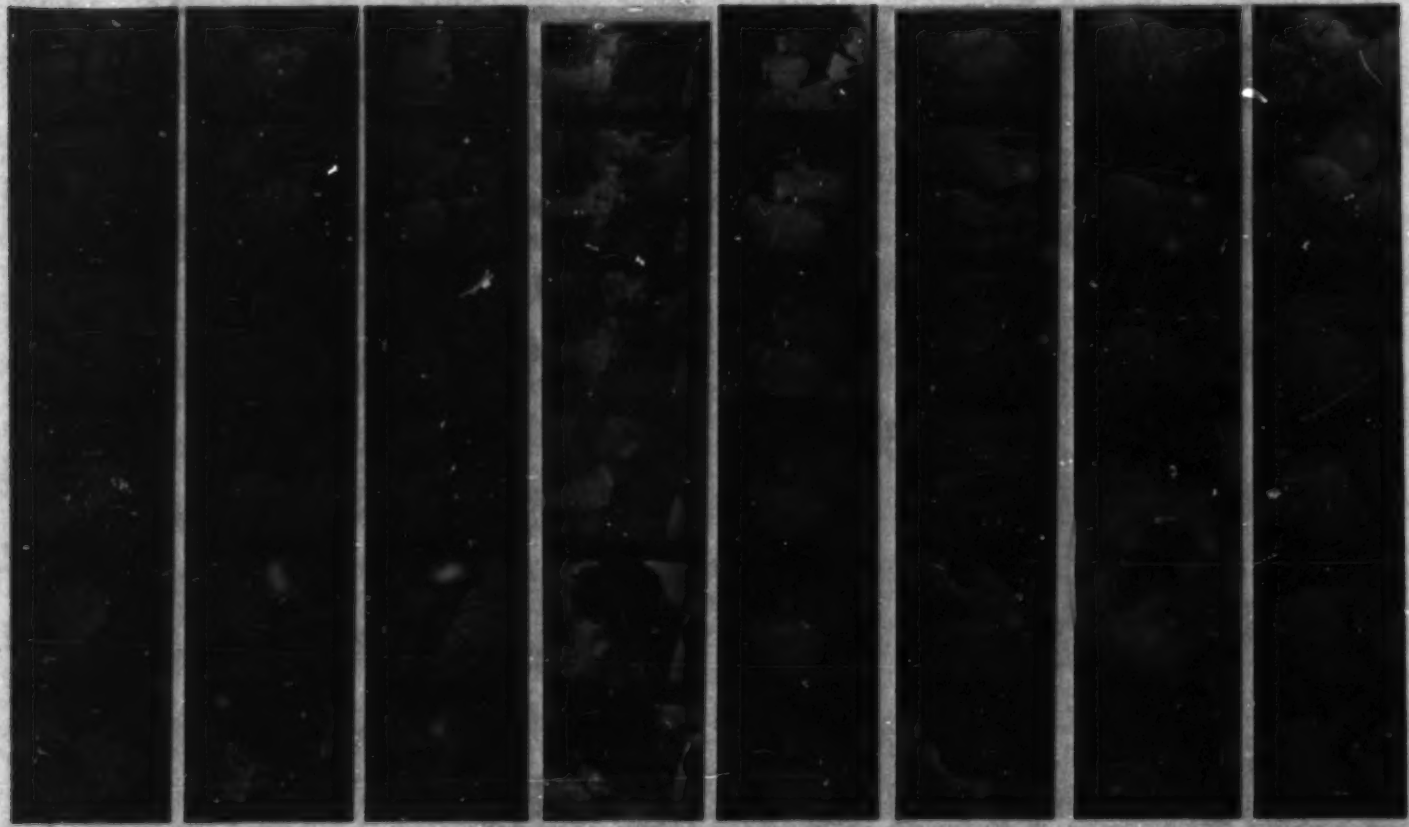
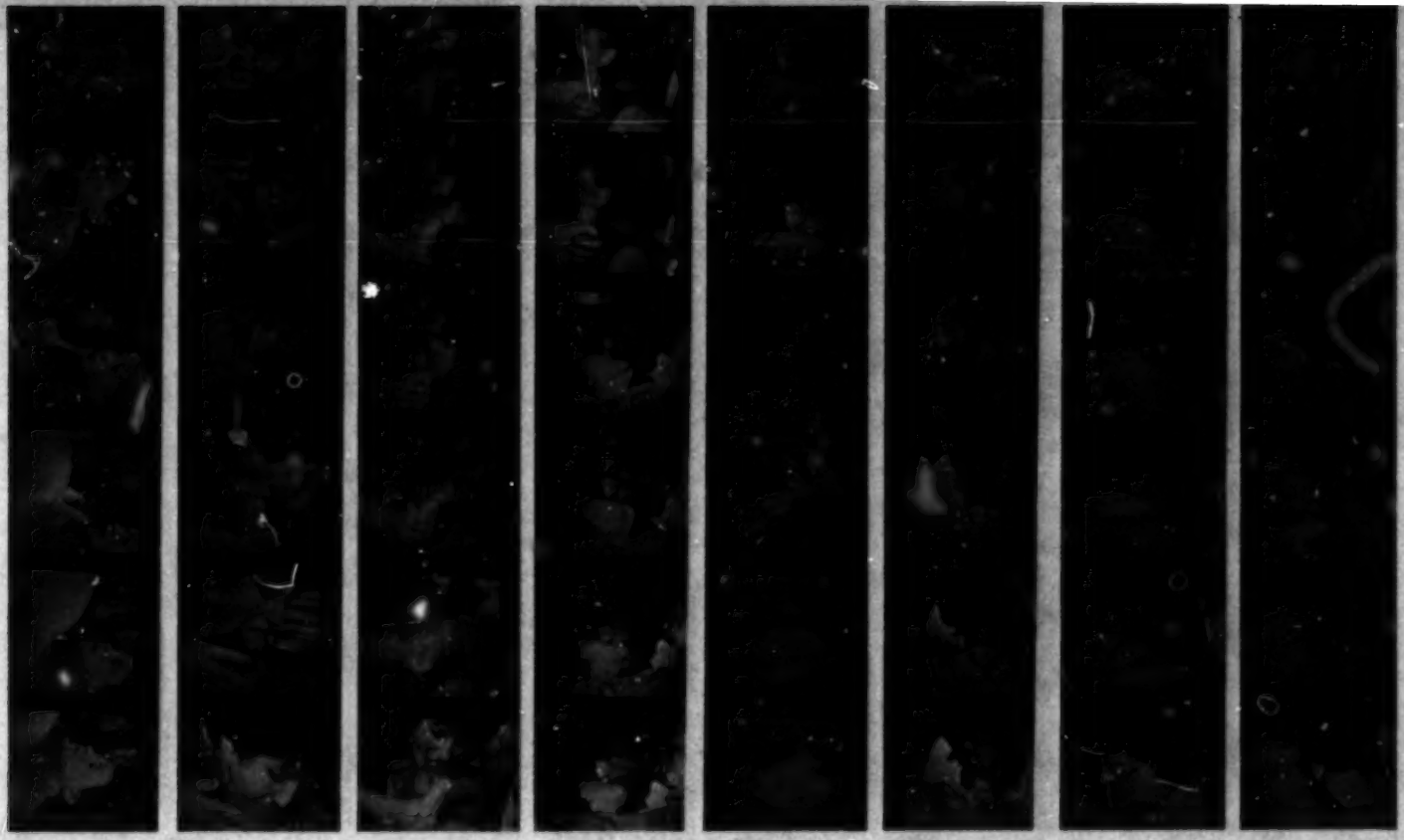
"C.B. MAMAS"
PART 3 OF 10 PARTS
(11:15-13:30) NUDE FEMALE, HOLDING SUCKER, IS IN TUB AS SECOND MALE BEGINS SCRUBBING HER BREASTS, THIGH, FEET AND VAGINA. (13:42-15:12) SECOND FEMALE PERFORMS FELLATIO ON SECOND MALE. (15:15-16:47) SECOND MALE AND SECOND FEMALE ENGAGE IN SEXUAL INTERCOURSE WITH MALE RECLINING.



"C.B. MAMAS"
PART 4 OF 10 PARTS
(16:50-17:01) EJACULATION. (17:04-19:55) THIRD MALE ENGAGES THIRD FEMALE IN SEXUAL INTERCOURSE FROM THE REAR.
(19:59-21:12) FELLATIO. (21:16-22:22) SEXUAL INTERCOURSE WITH FEMALE RECLINING.

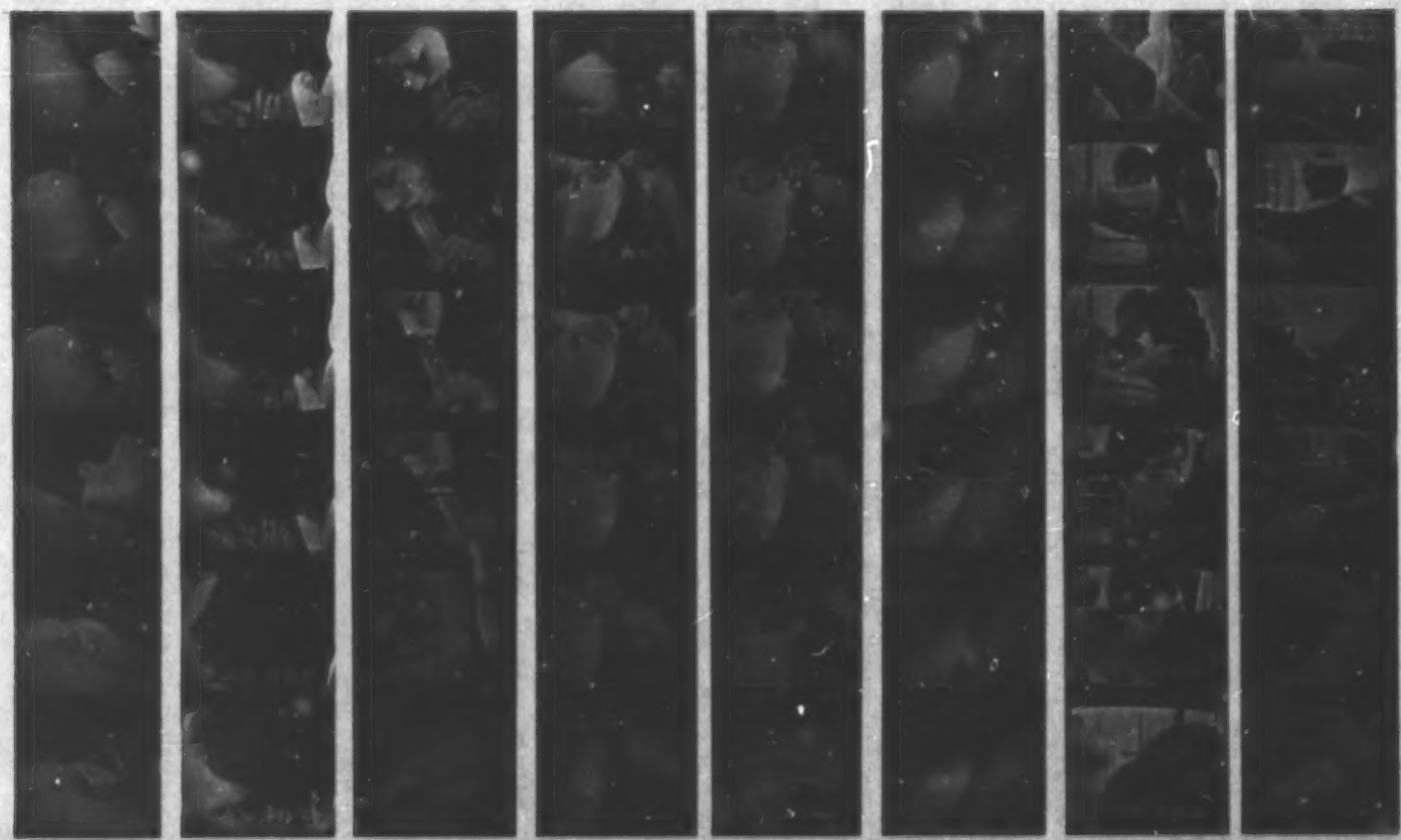
"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).





"C.B. MAMAS"
PART 5 OF 10 PARTS
(22:26-23:19) SEXUAL INTERCOURSE. (23:22-24:56) FELLATIO. (24:59-27:57) MALE KISSES, MASSAGES BREASTS, THEN LICKS ANUS OF FEMALE, AS FEMALE MASTURBATES.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



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"C.B. MAMAS"
PART 6 OF 10 PARTS
(28:01-29:07) MALE LICKS ANUS OF FEMALE AS SHE MASTURBATES. (29:11-29:35) FELLATIO. (29:39-30:07) SEXUAL INTERCOURSE MALE SUPERIOR. (30:10-30:59) FEMALE EXPOSES HER VAGINA AND PLACES HER FINGER IN HER ANUS. (31:02-31:58) SEXUAL INTERCOURSE FROM THE REAR. (32:02-33:33) TWO FEMALES ENGAGE IN LESBIAN ACTIVITY.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11. 1976).

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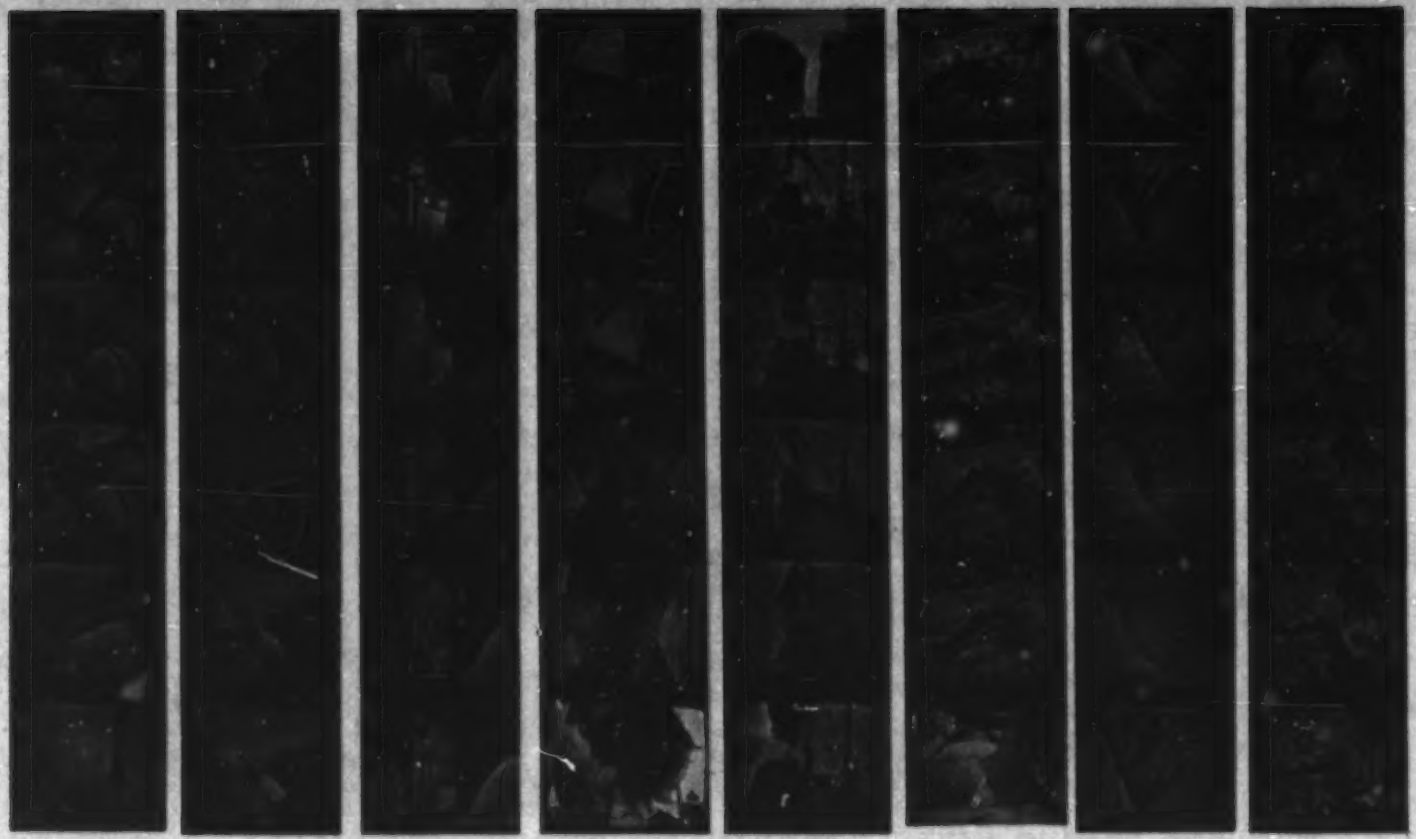
"C.B. MAMAS"
PART 7 OF 10 PARTS
(33:36-33:54) TWO FEMALES ENGAGE IN LESBIAN ACTIVITY. LESBIAN KISSING. (33:57-34:46) CUNNILINGUS. (34:49-36:10) DOUBLE CUNNILINGUS. (36:13-38:08) CUNNILINGUS. (38:12-39:08) MALE INTERRUPTS LESBIAN ACTIVITY AND ENGAGES FEMALE IN SEXUAL INTERCOURSE.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



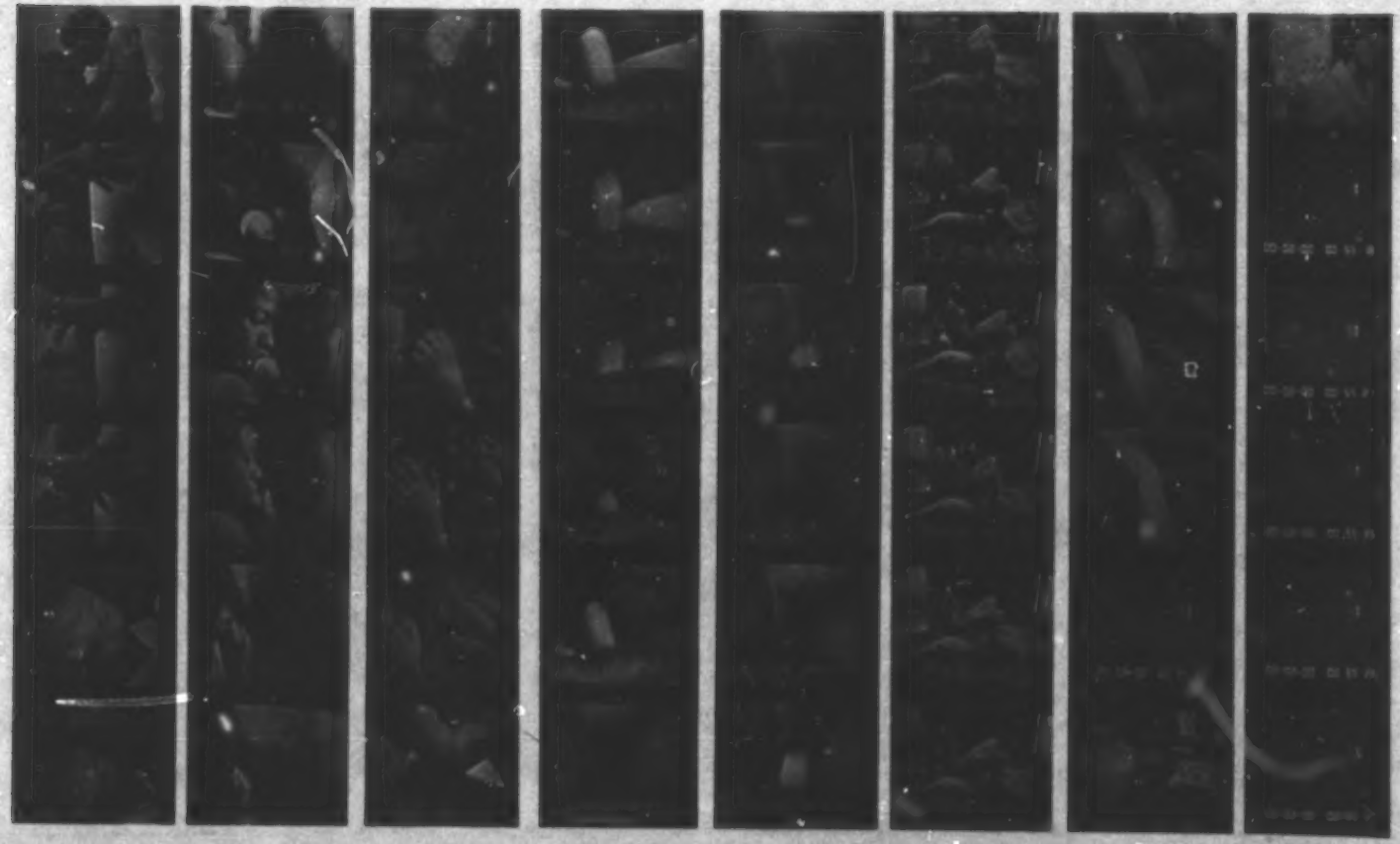
D-151

"C.B. MAMAS"
PART 8 OF 10 PARTS
(39:11-40:42) MALE ENGAGES FEMALE IN SEXUAL INTERCOURSE WITH MALE SUPERIOR. (40:46-40:49) FEMALE ENGAGES IN SEXUAL INTERCOURSE WITH FEMALE SUPERIOR. (40:53-41:34) FELLATIO. (41:38-42:20) SEXUAL INTERCOURSE FROM THE REAR. (42:23-44:15) LESLIE'S DAUGHTER LIES ON HER BED AND BEGINS TO MASTURBATE, SHE SAYS "MOM, SHIT. HER AND HER PARTY. WHAT ABOUT ME. I WANT SOME PARTY TOO." (44:20-44:43) A MALE ENTERS AND SAYS "EXCUSE ME, HEY YOU KNOW WHERE I CAN GET SOME MILK FOR MY COFFEE?" FEMALE MANIPULATES HER BREAST AND SQUIRTS MILK INTO A CUP.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46891) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MOOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).

"C.B. MAMAS"
PART 9 OF 10 PARTS
(44:46-46:17) FEMALE (LESLIE'S DAUGHTER) CONTINUES TO MANIPULATE HER BREASTS AND SQUIRT MILK AT MALE'S FACE. (46:21-47:27) SHE PERFORMS FELLATIO ON MALE. (47:30-48:40) MALE PERFORMS SEXUAL INTERCOURSE FROM THE REAR. (48:44-49:54) FEMALE NEGRO MASSAGES HER BREASTS AND VAGINAL AREA. (49:57-50:18) NUDE MALE KISSES FEMALE AND MASSAGES HER BREAST.

"C.B. MAMAS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. L.P. 46821) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO MCOKS, INC. (DATE OF ISSUANCE: NOV. 11, 1976).



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"C.B. MAMAS"
PART 10 OF 10 PARTS
(50:21-50:58) KISSING CONTINUES. (51:00-51:49) FELLATIO. (51:52-54:36) SEXUAL INTERCOURSE WITH FEMALE SUPERIOR. (54:40-54:43) EJACULATION ON FEMALE'S STOMACH. PARTY IS OVER. (54:47-55:01) RETURN TO FEMALE IN HOUSECOAT AND CURLERS. (55:04-55:49) LESLIE IN HOUSECOAT AND HAIR CURLERS OPENS THE DOORS FOR HER HUSBAND; SHE BERATES HIM "YOU GOT A BOOZE SMELL ON YOU AGAIN" ETC., ETC. FEATURE ENDS.

APPENDIX D

TIME-MOTION STUDY* OF THE FILM

"INSIDE MARILYN CHAMBERS"

The motion picture film "Inside Marilyn Chambers" was issued a "Certificate of Registration of a Claim to Copyright" by the Copyright Office on Nov. 18, 1976.

* A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Photographs have been taken every 3.6 seconds playing time.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

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"INSIDE MARILYN CHAMBERS"
PART 1 OF 14 PARTS
(00:03-04:42) DEPICT THE TITLE "INSIDE MARILYN CHAMBERS" PLUS VARIOUS SHOTS OF HER WALKING AND TALKING.
(04:45-05:34) DEPICT SEXUAL INTERCOURSE.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18. 1976).

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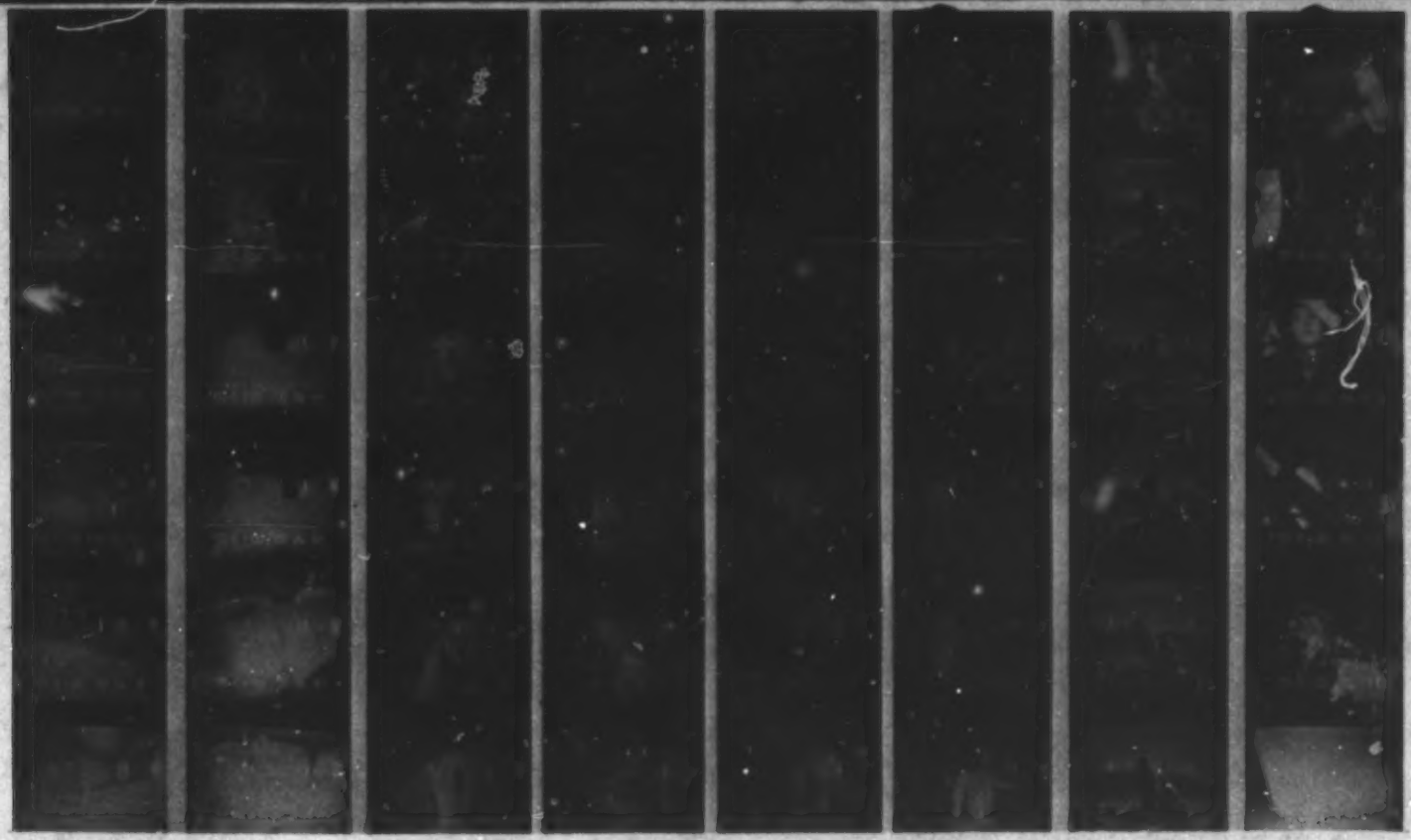

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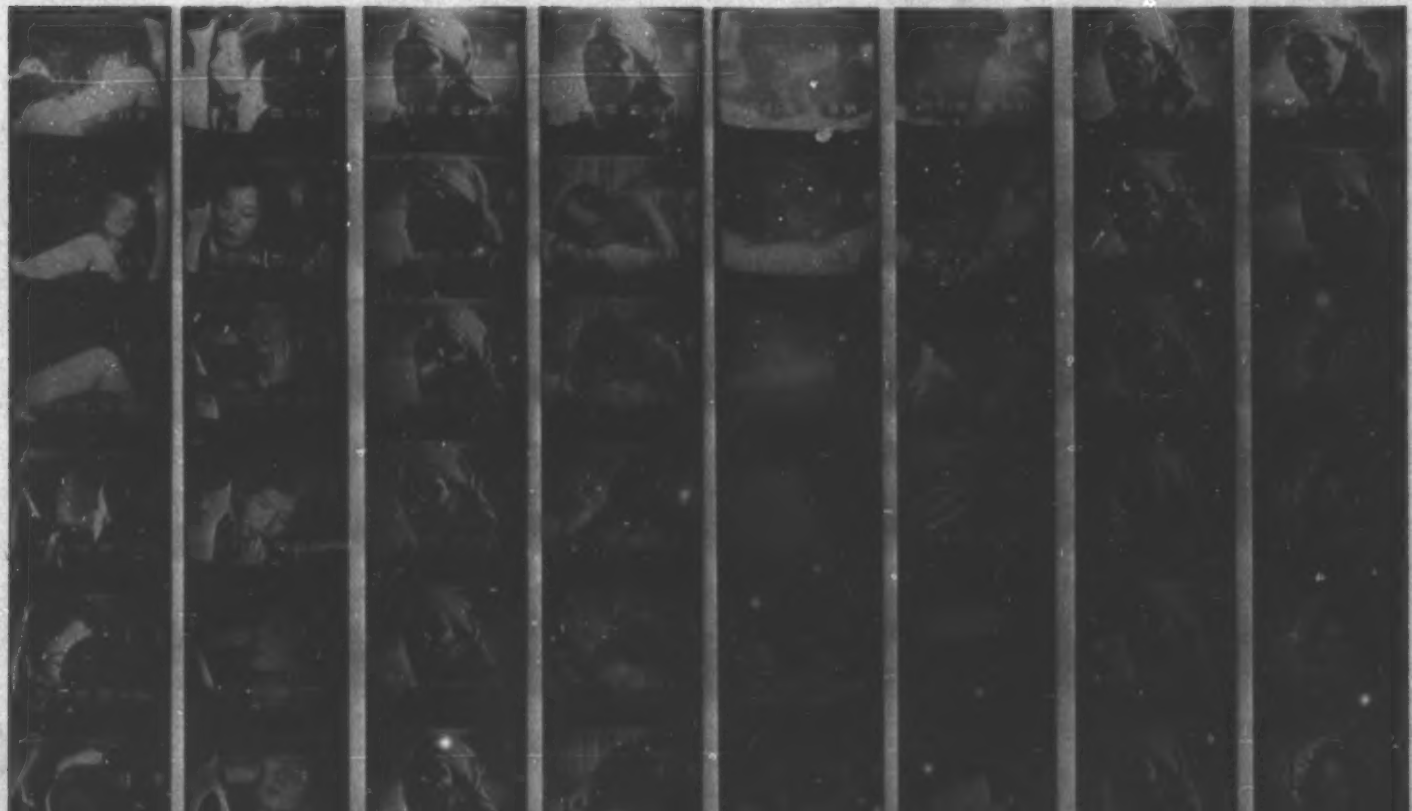
"INSIDE MARILYN CHAMBERS"
PART 2 OF 14 PARTS
(05:37-09:13) TWO FEMALES ARE ENGAGED IN FONDLING AND MASTURBATION. ALSO, SOME SEXUAL INTERCOURSE SCENES WITH MARILYN CHAMBERS. (09:17-10:09) CONTINUE TO DEPICT SEXUAL ACTIVITY. (10:12-10:40) MALE NEGRO STAR JOHNNY KEYES IS INTERVIEWED AND RECALLS HIS MEETING WITH MARILYN CHAMBERS. (10:44-11:08) FEMALES PREPARE FOR FELLATIO.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).



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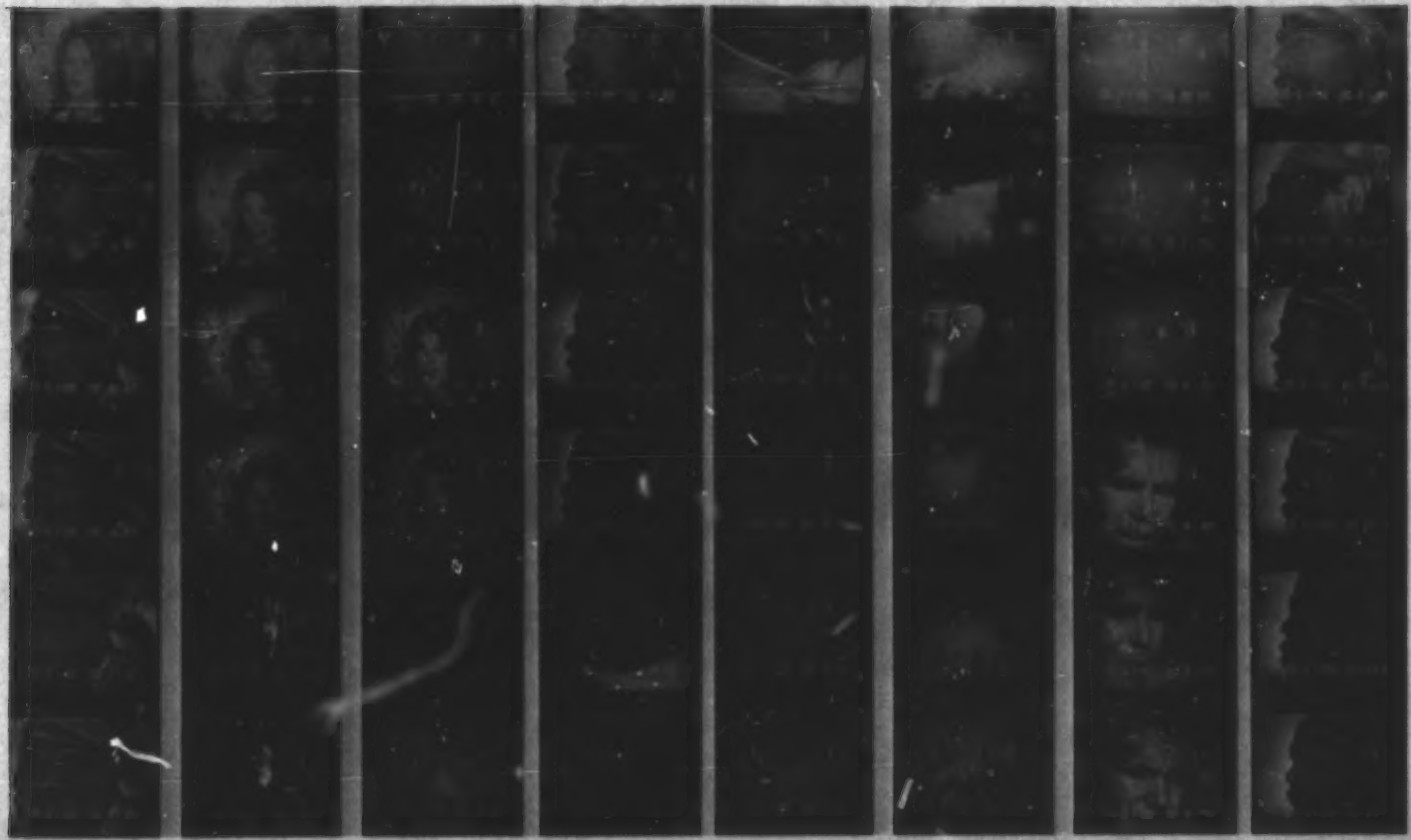
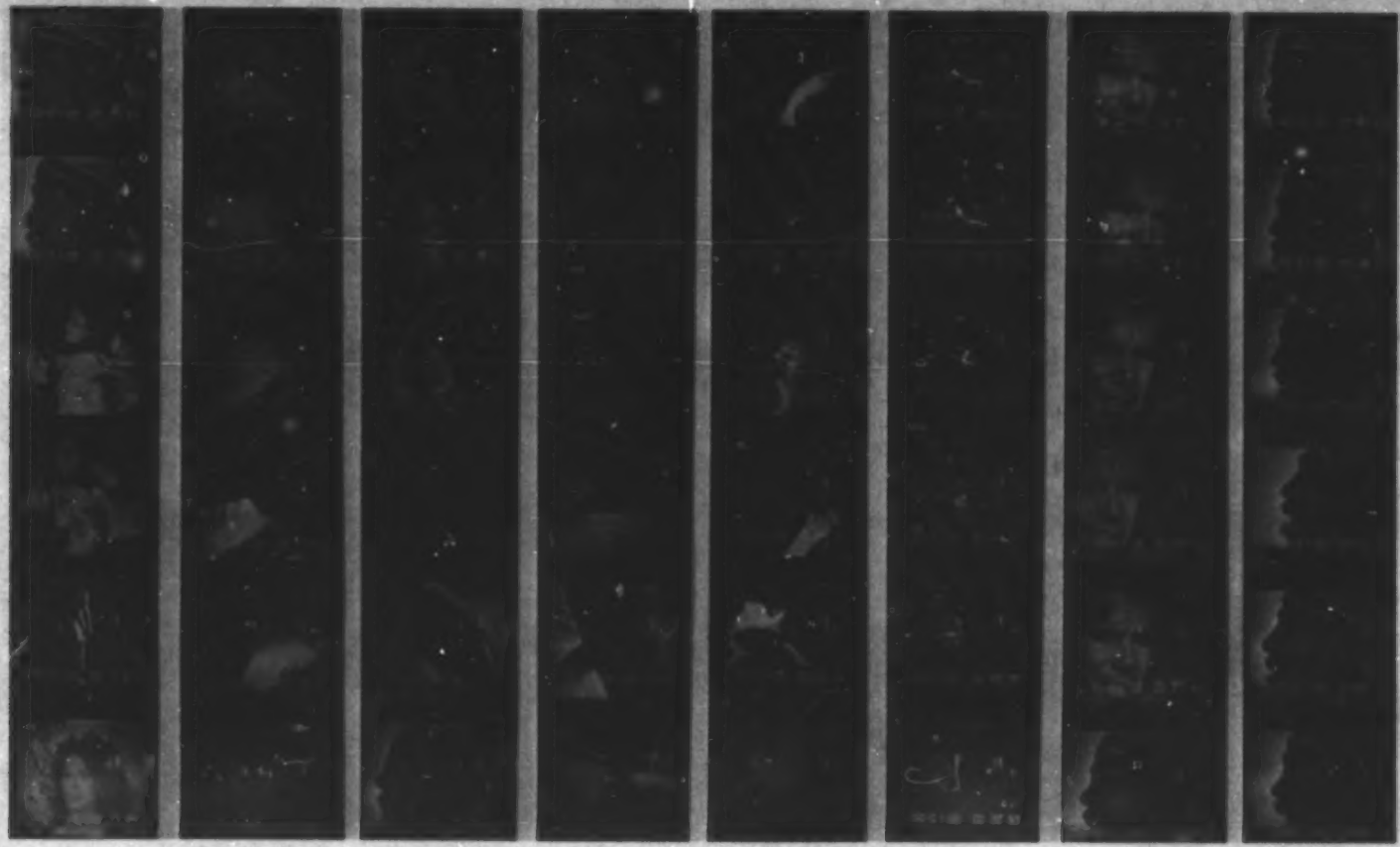
"INSIDE MARILYN CHAMBERS"
PART 3 OF 14 PARTS
(11:12-15:02) CONTAINS SCENES THAT WERE NOT SHOWN IN "BEHIND THE GREEN DOOR" SHOWING TWO FEMALES FELLATING JOHNNY KEYES. HE RECALLS THOSE SCENES AND RELATES HOW HE AND MARILYN MET. SCENES OF KEYES AND CHAMBERS ENGAGED IN CUNNILINGUS AND SEXUAL INTERCOURSE. (15:05-16:43) FACES OF KEYES AND MARILYN CHAMBERS AS INTERVIEWS CONTINUE.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976)





"INSIDE MARILYN CHAMBERS"
PART 4 OF 14 PARTS
(16:46-18:41) INTERVIEWS CONTINUE. SCENES FROM "BEHIND THE GREEN DOOR." (18:45-21:04) DEPICT KEYES ENGAGING IN SEXUAL INTERCOURSE. (21:07-22:17) ANOTHER MALE IS INTERVIEWED. ALSO JOHNNY KEYES AND MARILYN CHAMBERS ARE INTERVIEWED.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).

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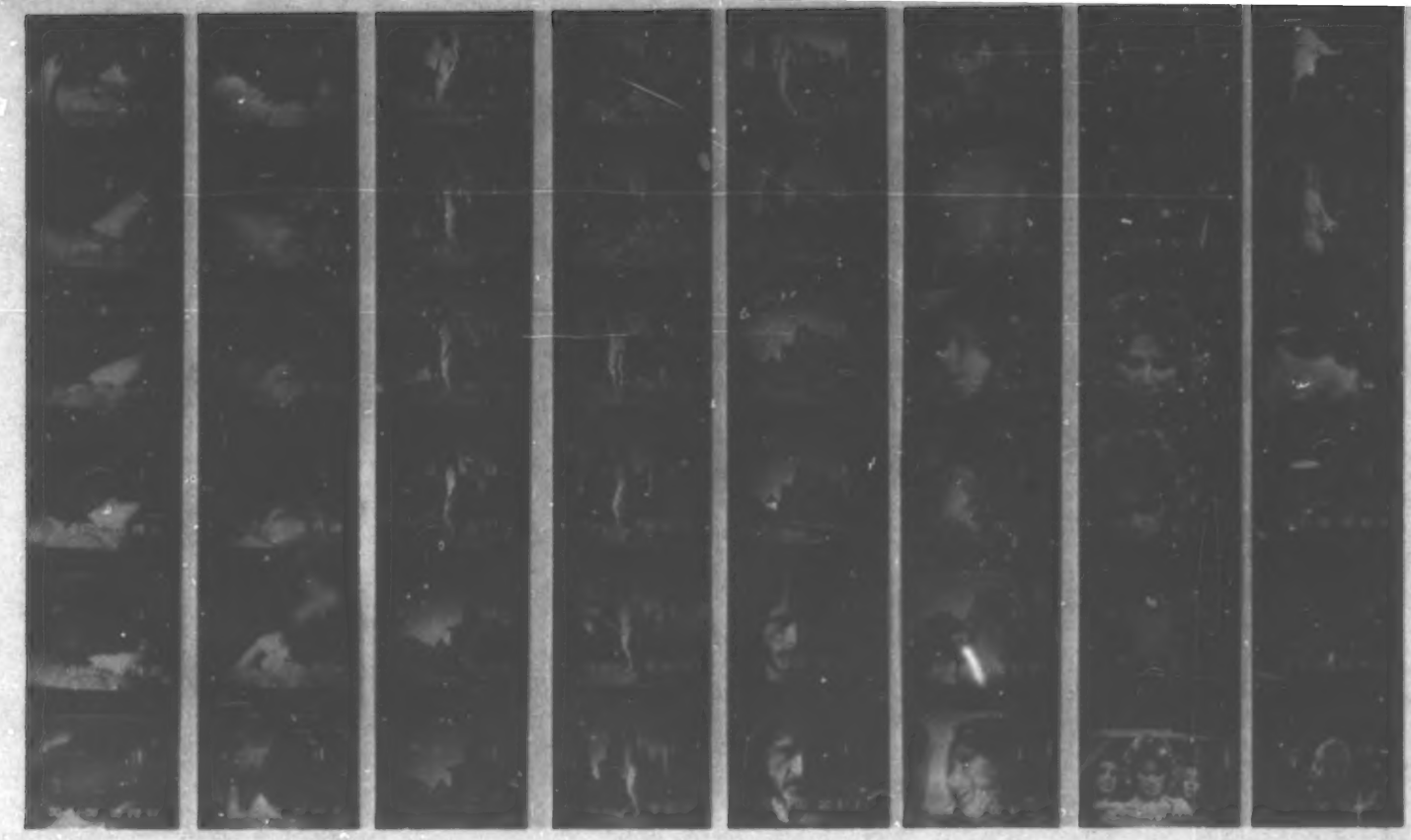
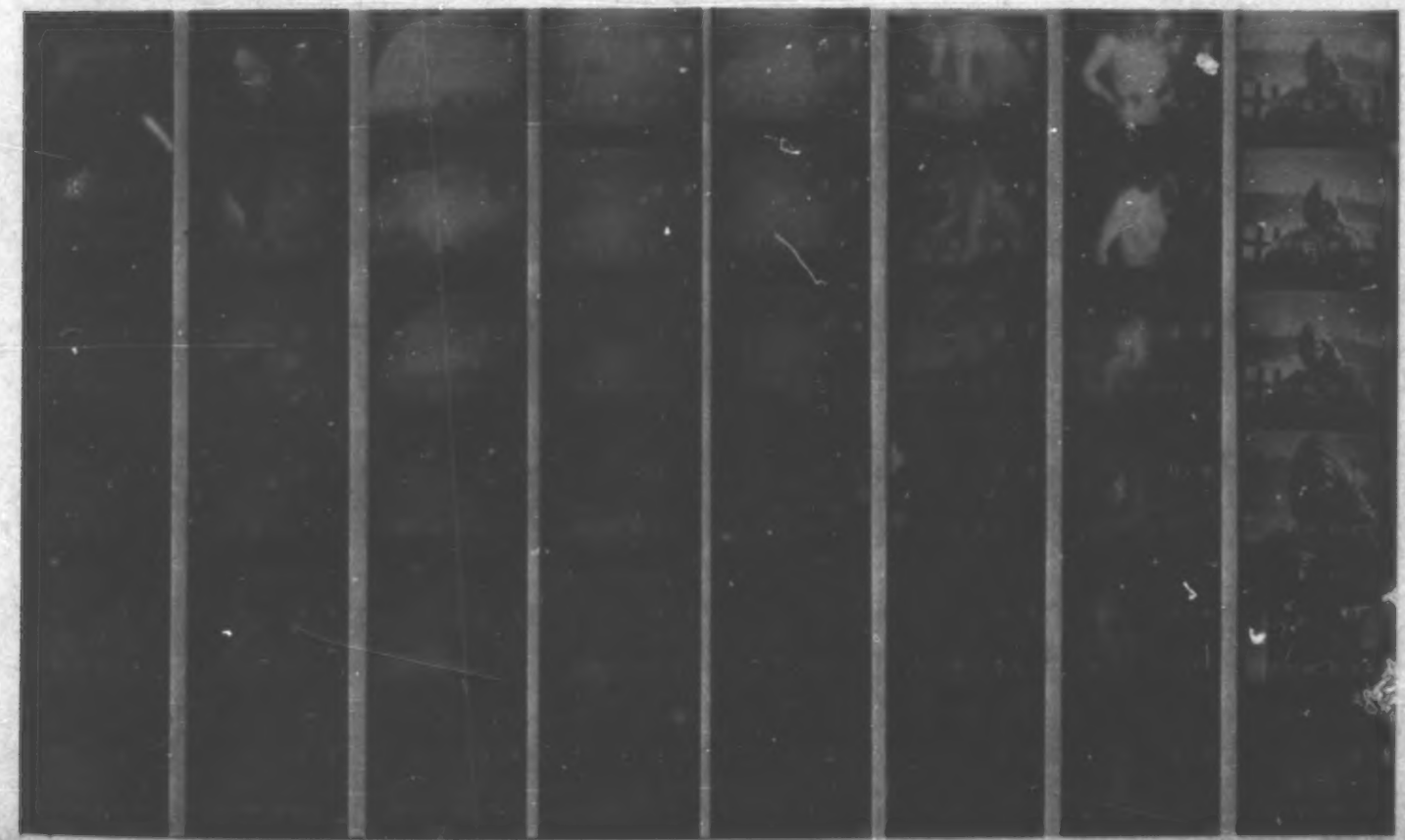
"INSIDE MARILYN CHAMBERS"
PART 5 OF 14 PARTS
(22:21-23:13) KEYES AND MARILYN CHAMBERS CONTINUE TALKING. (23:16-26:42) SHOW KEYES, CHAMBERS AND ANOTHER FEMALE IN BED. CHAMBERS LEAVES THE BED AND THE OTHER FEMALE ENGAGES KEYES IN FELLATIO. MARILYN CHAMBERS FELLATES JOHNNY KEYES. (26:45-27:52) SEXUAL INTERCOURSE.

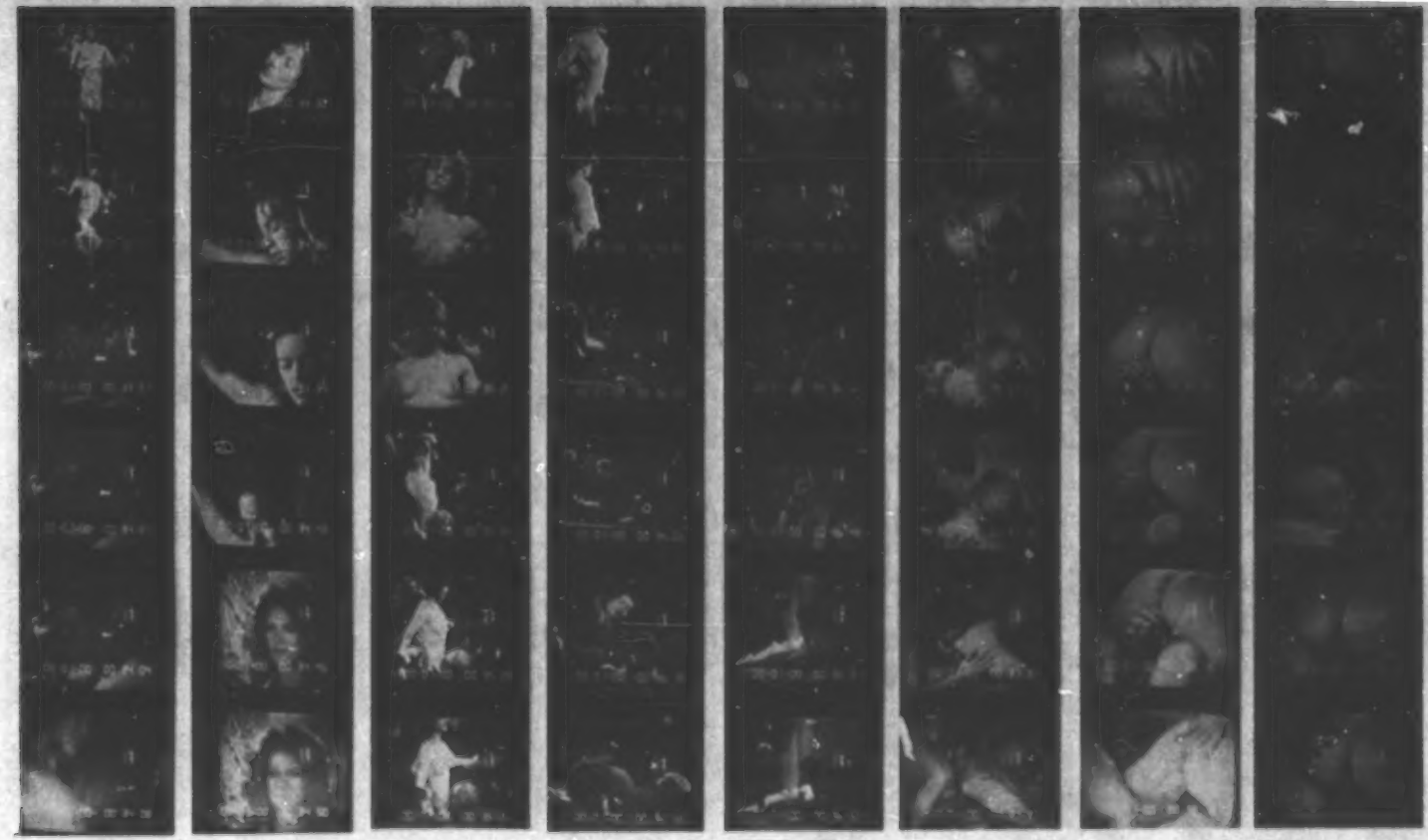
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).



"INSIDE MARILYN CHAMBERS"
PART 6 OF 14 PARTS
(27:55-29:19) SEXUAL INTERCOURSE. (29:22-30:04) DEPICT ARTIE MITCHELL DIRECTING PORNOGRAPHIC SCENES. (30:07-31:14) SCENES NOT SHOWN IN "RESURRECTION OF EVE" DEPICTING NUDE ACTORS. (31:17-32:02) ANOTHER MALE ACTOR SHOWN AND MARILYN CHAMBERS CONTINUES INTERVIEW. (32:06-33:26) SCENES FROM "BEHIND THE GREEN DOOR."

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).



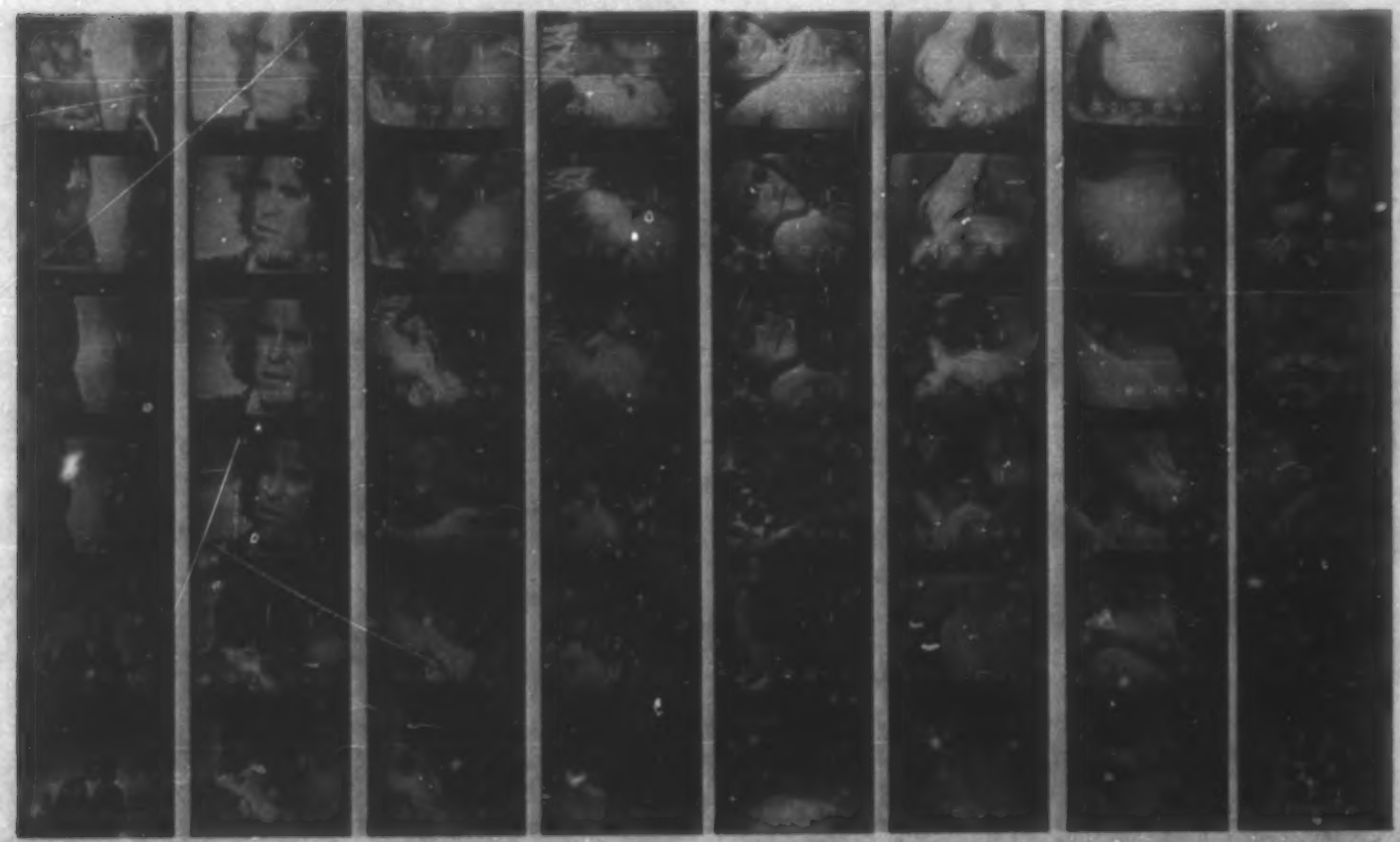


"INSIDE MARILYN CHAMBERS"
PART 7 OF 14 PARTS
(33:29-34:43) SCENE FROM "BEHIND THE GREEN DOOR" CONTINUES. (34:46-39:00) INTEPVIEW OF MARILYN CHAMBERS AND SCENES OF HER ENGAGED IN SEXUAL INTERCOURSE, CUNNILINGUS, AND SIMULTANEOUS SEXUAL INTERCOURSE AND SODOMY.

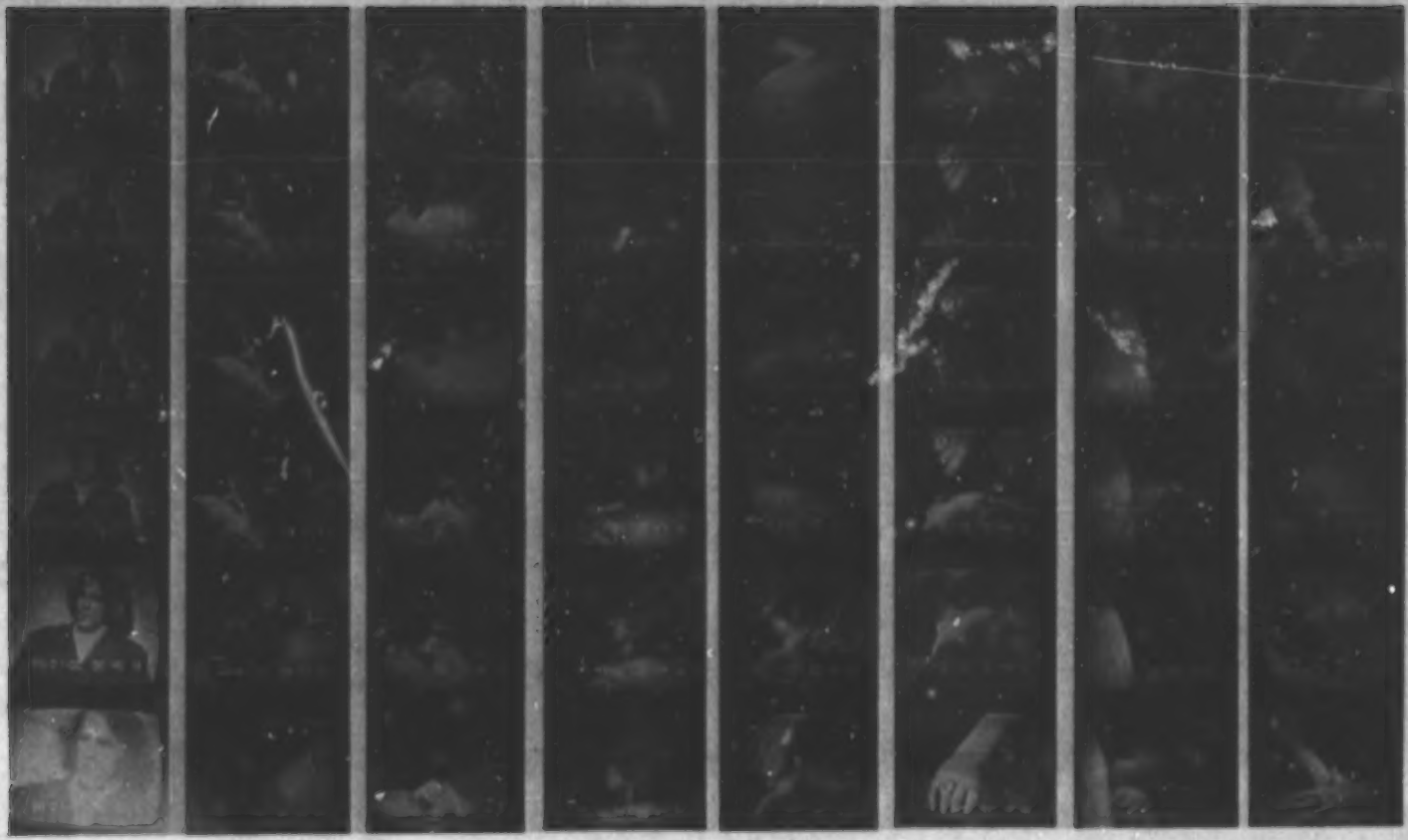
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18 1976).

"INSIDE MARILYN CHAMBERS"
PART 3 OF 14 PARTS
(39:04-41:13) SEXUAL INTERCOURSE AND FELLATIO. (41:16-44:35) SHOW VARIOUS NUDE SCENES, CUNNILINGUS BETWEEN TWO FEMALES, PLUS SEXUAL INTERCOURSE BETWEEN A MALE AND FEMALE FROM THE REAR.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).



D-174



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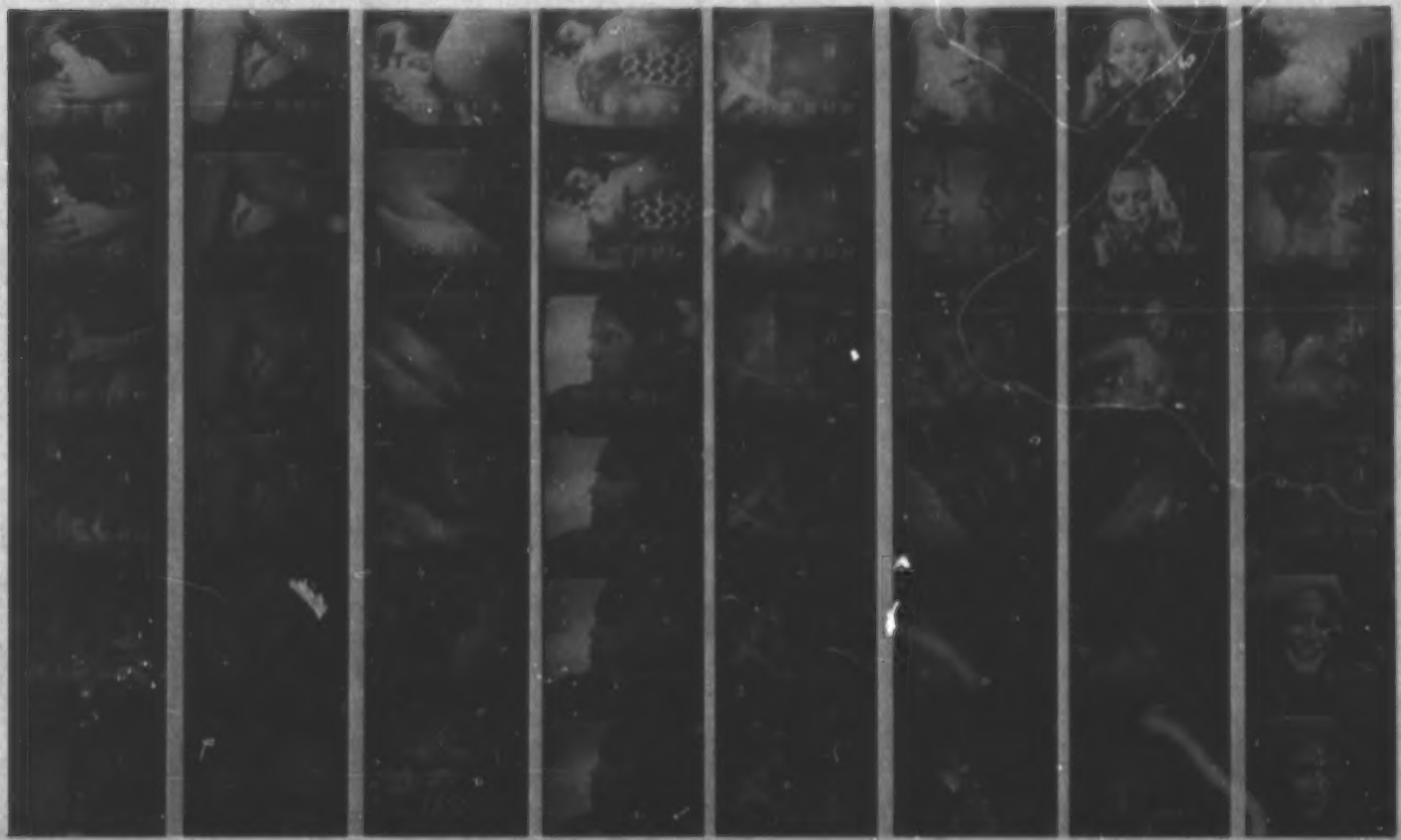
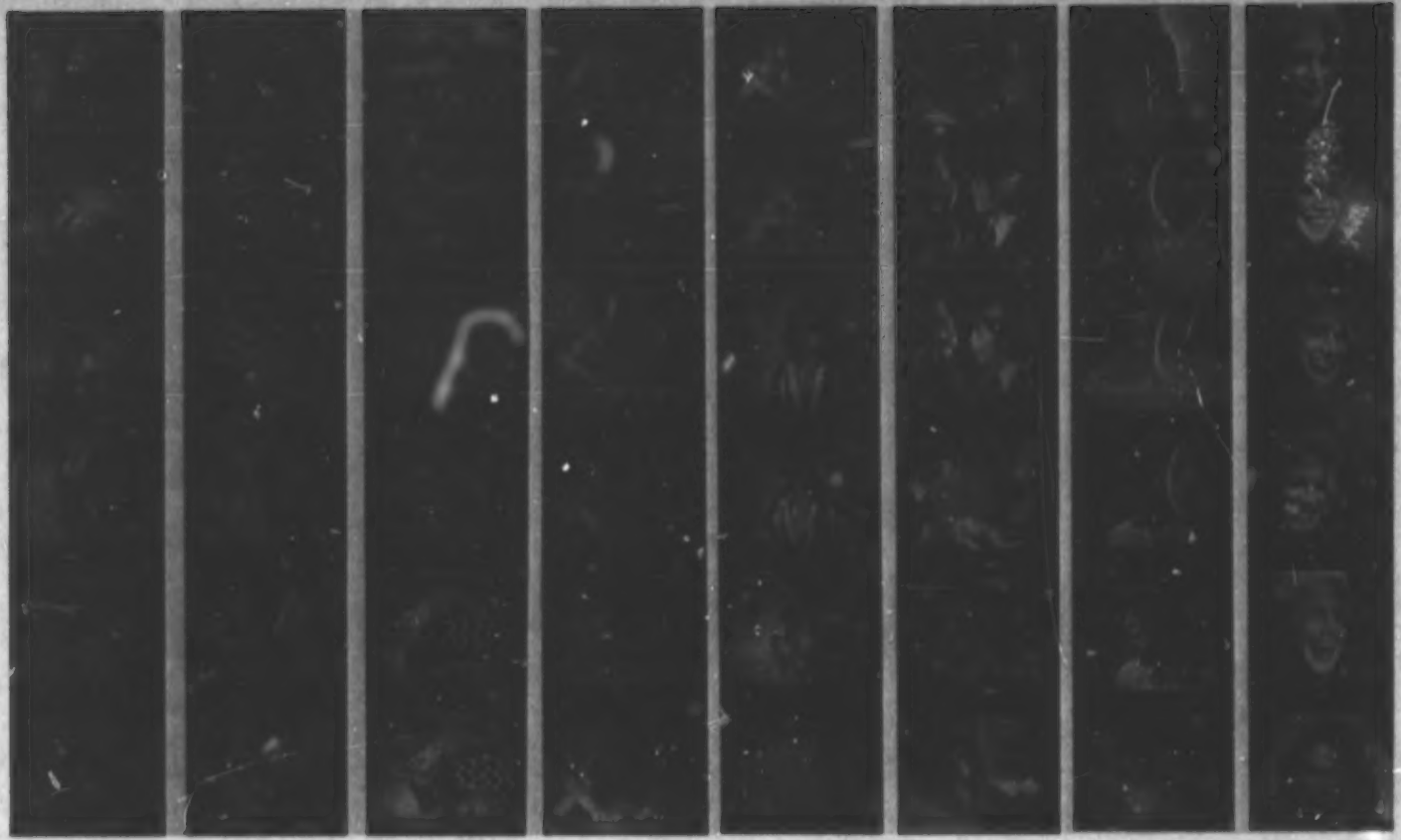
"INSIDE MARILYN CHAMBERS"
PART 9 OF 14 PARTS
(44:38-44:49) MARILYN CHAMBERS AND A MALE ENGAGED IN FELLATIO AND CUNNILINGUS. (44:52-45:30) MALE ACTOR IS INTERVIEWED. (45:34-50:09) MALE ACTOR AND CHAMBERS ENGAGE IN SEXUAL INTERCOURSE, BREAST LICKING AND FELLATIO.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).





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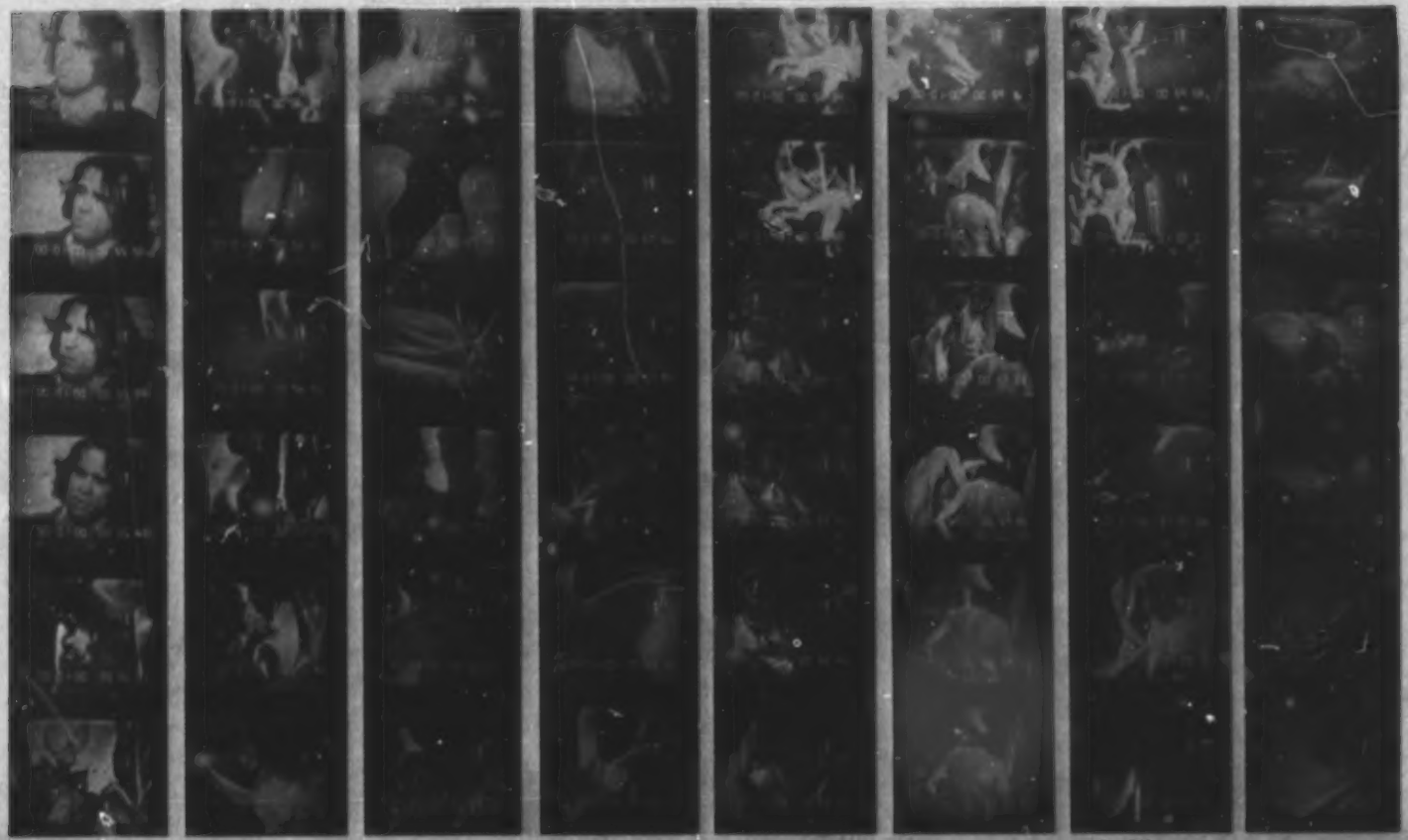
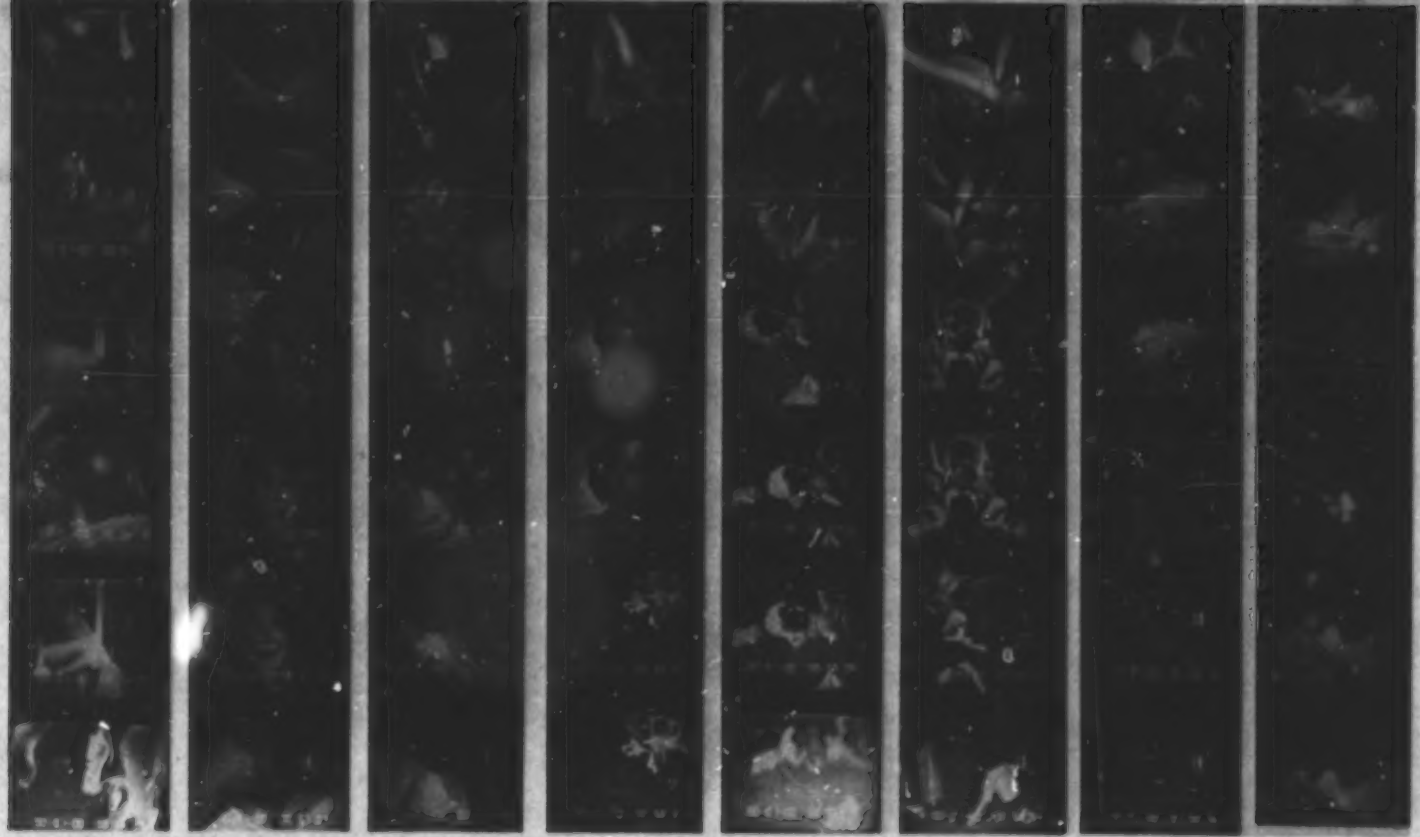
"INSIDE MARILYN CHAMBERS"
PART 10 OF 14 PARTS
(50:12-52:21) MARILYN CHAMBERS CONTINUES FELLATIO, CUNNILINGUS, AND SEXUAL INTERCOURSE SCENES. (52:25-52:35) MALE ACTOR STILL BEING INTERVIEWED. (52:39-54:27) SEXUAL SCENES CONTINUE WITH MARILYN CHAMBERS INTERVIEWED AND TALKING ON THE PHONE. (54:30-55:43) MARILYN SHOWN NUDE LOOKING IN A MIRROR AND LAUGHING.

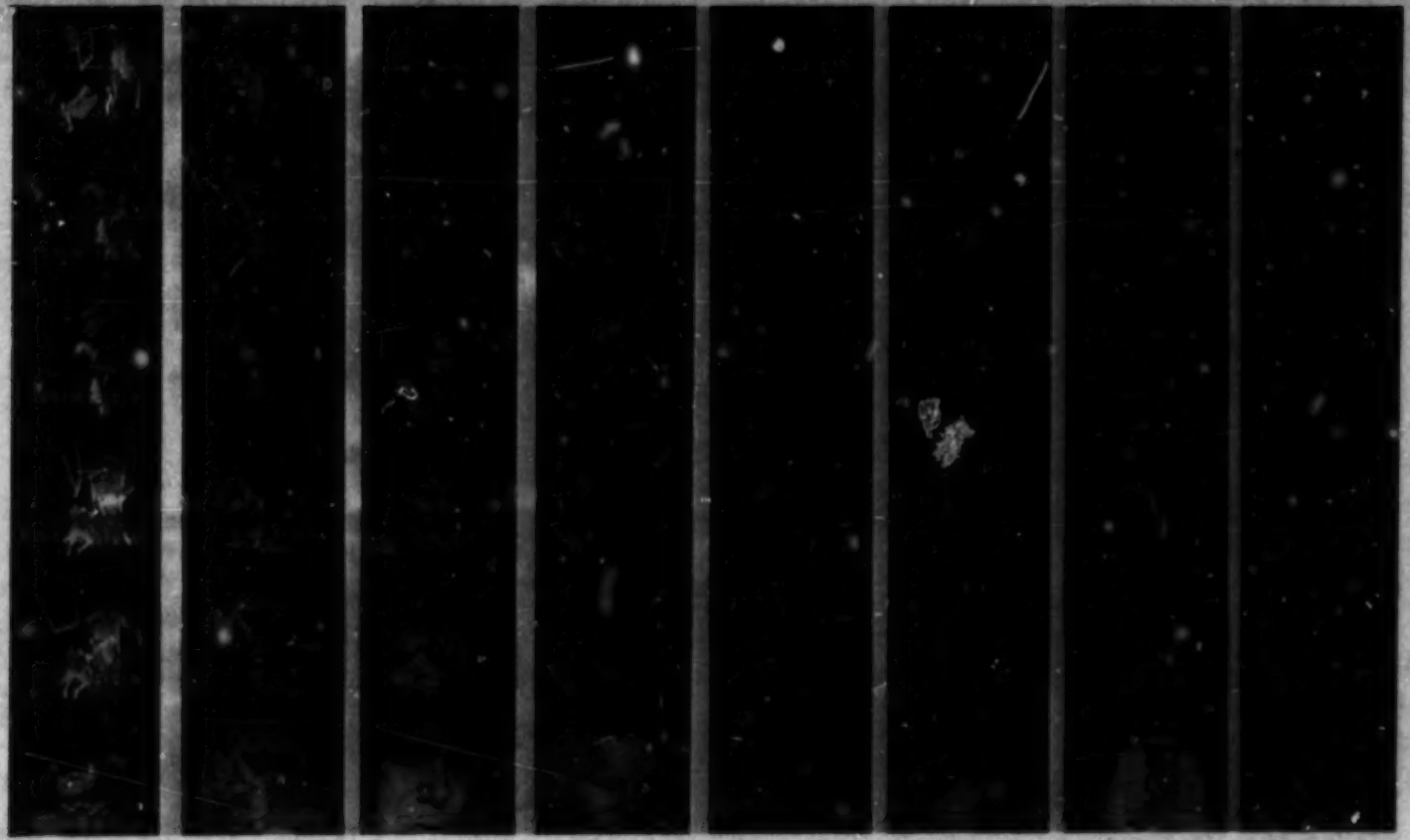
"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).





"INSIDE MARILYN CHAMBERS"
PART 11 OF 14 PARTS
(55:47-57:04) THE MALE ACTOR TALKS AS MARILYN CHAMBERS' INTERVIEW CONTINUES. (57:0[illegible]-101:18) VARIOUS SCENES OF MARILYN CHAMBERS ENGAGING OTHERS IN SEXUAL ACTIVITY.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18 1976).



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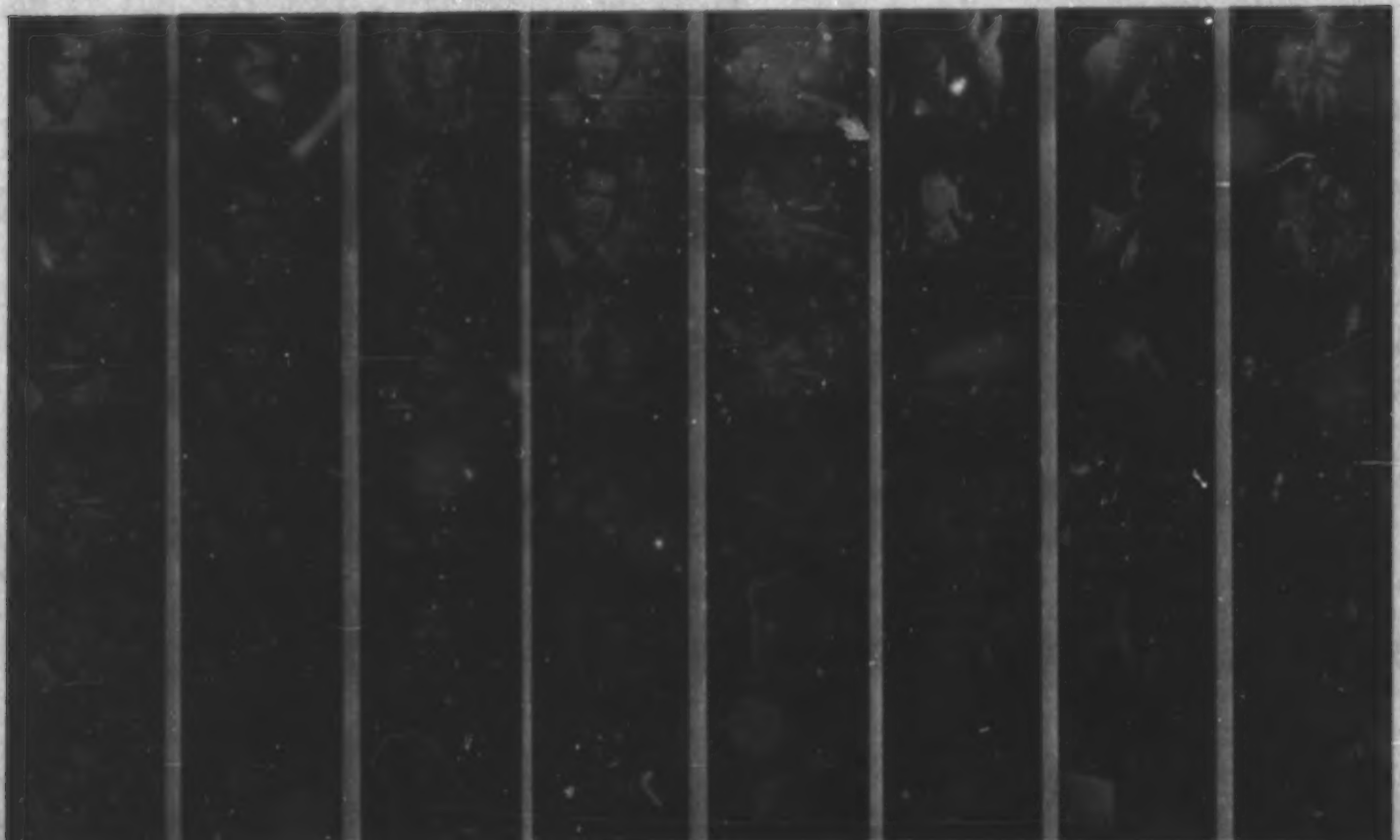
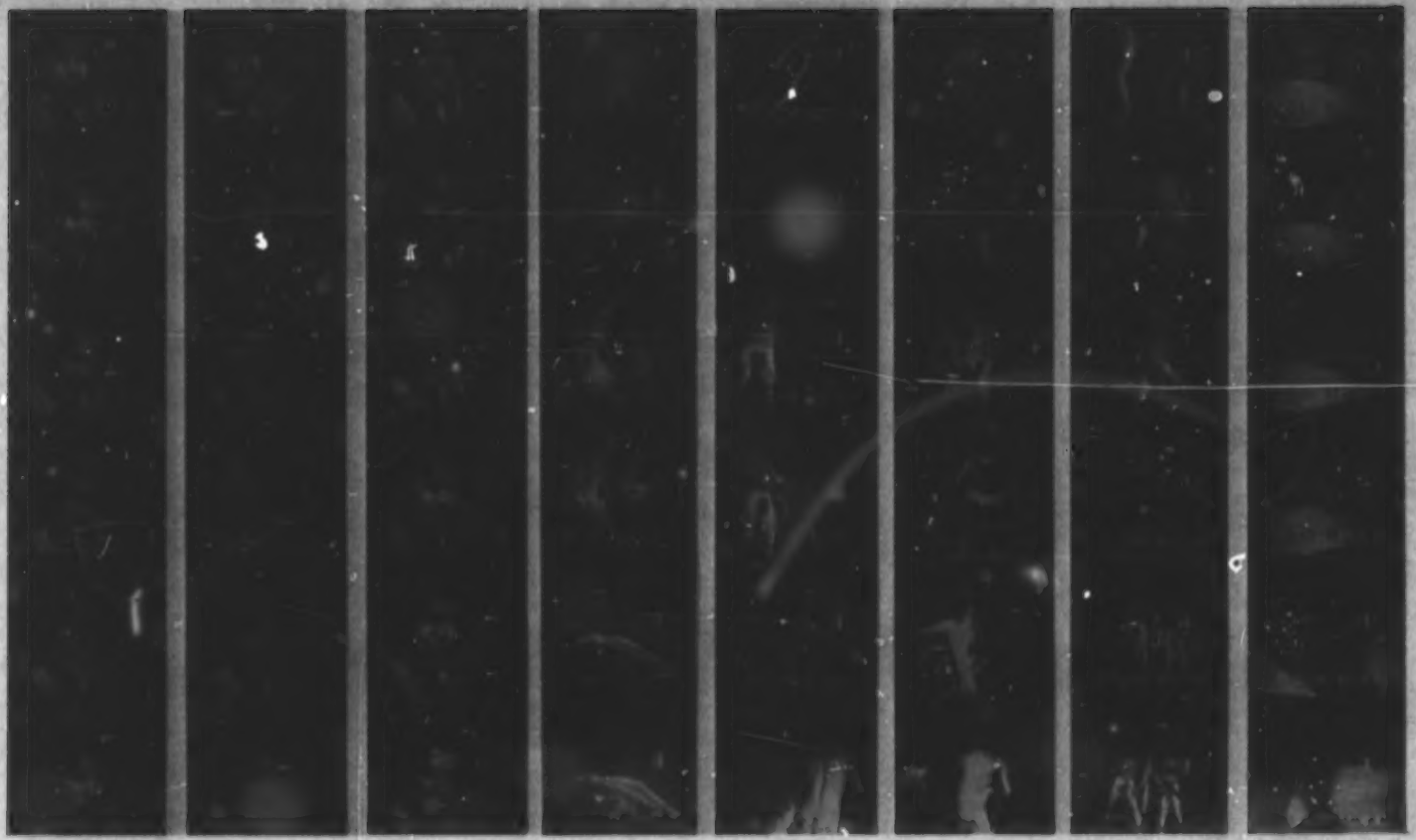
"INSIDE MARILYN CHAMBERS"
PART 12 OF 14 PARTS
(B01:21-B02:03) FELLATIO SHOWN AS INTERVIEWS CONTINUE OF ACTORS INVOLVED WITH CHAMBERS IN "BEHIND THE GREEN DOOR." (B02:47-B06:52) MALE ACTOR CONTINUES TO DISCUSS SCENES OF "BEHIND THE GREEN DOOR."

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18, 1976).





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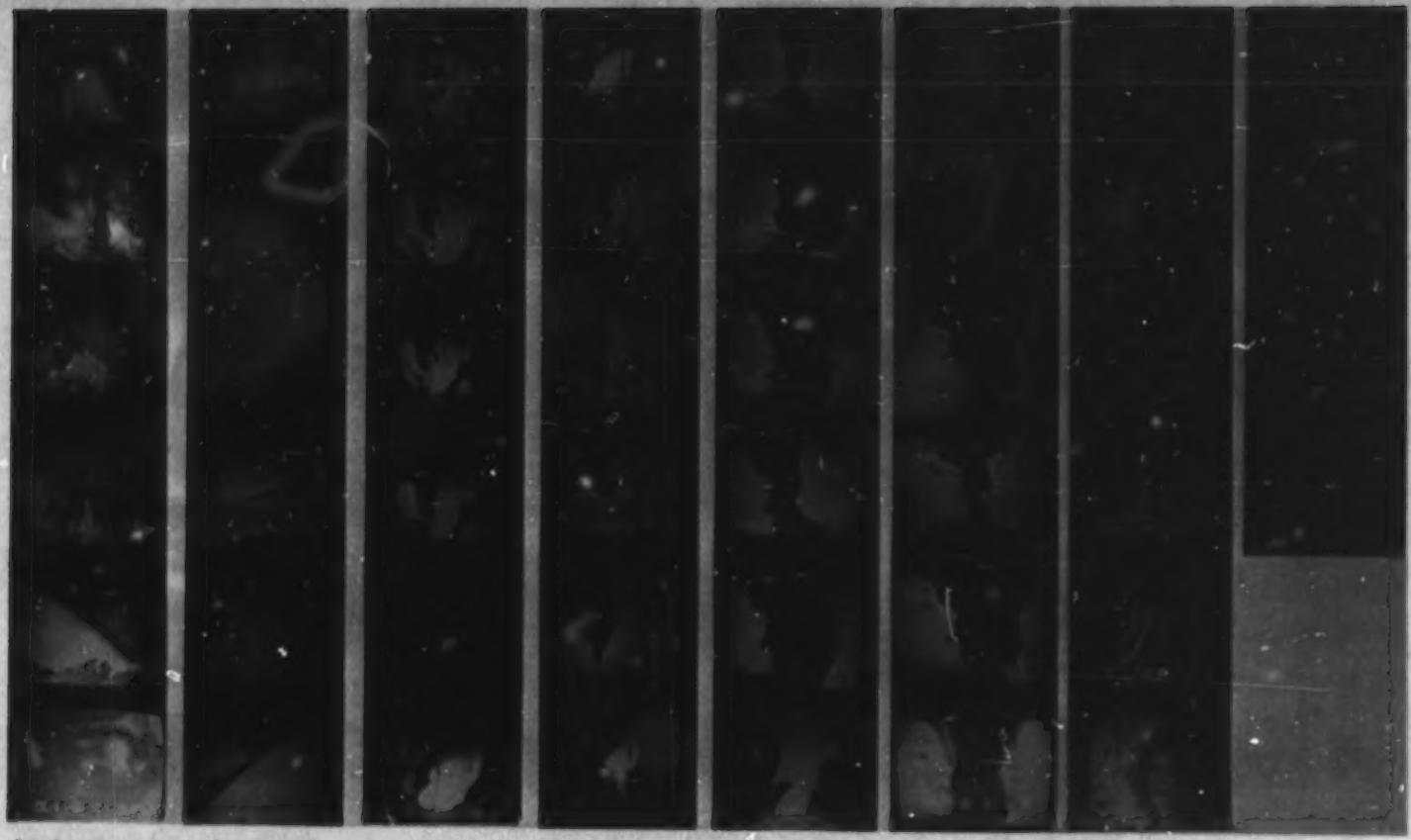
"INSIDE MARILYN CHAMBERS"
PART 13 OF 14 PARTS
(106:56-112:27) DEPICT MARILYN CHAMBERS AND MALE ACTOR BEING INTERVIEWED SEPARATELY. NUDE SCENES FROM "BEHIND THE GREEN DOOR" ARE SHOWN.

"INSIDE MARILYN CHAMBERS": CERTIFICATE OF REGISTRATION OF A CLAIM TO COPYRIGHT (REG. NO. M.P. 30483) WAS ISSUED BY THE REGISTER OF COPYRIGHTS TO CINEMA 7, INC. (DATE OF ISSUANCE: NOV. 18,



"INSIDE MARILYN CHAMBERS"
PART 14 OF 14 PARTS
(1:12:30-1:17:55) CONTINUED SCENES FROM "BEHIND THE GREEN DOOR." - THE TRAPEZE SCENES WITH FELLATIO AND CUNNILINGUS. EJACTULATION. CLOSING SCENE OF MARILYN CHAMBERS TALKING, THEN SHOWN NUDE AS CREDITS ARE SHOWN AS FILM ENDS.

APPENDIX E

U.S. Constitution,

Art. 1, sec. 8, clause 8 E-1

17 U.S.C.,

Section 1 E-1

Section 5 E-8

Section 11 E-9

Section 101 E-10

Section 116 E-17

Section 209 E-17

Section 102 E-20

Section 106 E-21

Section 107 E-23

Section 410 E-24

Section 505 E-26

Treaty (1910) E-28

Section 8, Clause 1. Powers of Congress.

The Congress shall have Power . . .

Clause 8. Patents and copyrights.

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

17 U.S.C. Section 1. Exclusive rights as to copyrighted works.

Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work; to convert it into a novel or other

nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver, authorize the delivery of, read, or present the copyrighted work in public for profit if it be a lecture, sermon, address or similar production, or other nondramatic literary work; to make or procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, delivered, presented, produced, or reproduced; and to play or perform it in public for profit, and to exhibit, represent, produce, or reproduce it in any manner or by any method whatsoever. The damages for the infringement by broadcast of any work

referred to in this subsection shall not exceed the sum of $100 where the infringing broadcaster shows that he was not aware that he was infringing and that such infringement could not have been reasonably foreseen; and

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever; and

(e) To perform the copyrighted

work publicly for profit if it be a musical composition; and for the purpose of public performance for profit, and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: Provided, That the provisions of this title, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty,

convention, agreement, or law, to citizens of the United States similar rights. And as a condition of extending the copyright control to such mechanical reproductions, that whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of 2 cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the 20th day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said

musical work, and royalties shall be due on the parts manufactured during any month upon the 20th of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit. It shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense of any suit, action, or proceeding for any infringement of such copyright.

In case of failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand, the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this title, not exceeding three times such amount.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs. (July 30, 1947, c. 391, §1, 61 Stat. 652; July 17, 1952, c. 923,

81, 66 Stat. 752.)

17 U.S.C. Section 5. Classification of works for registration.

The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations.

(b) Periodicals, including newspapers.

(c) Lectures, sermons, addresses (prepared for oral delivery).

(d) Dramatic or dramatico-musical compositions.

(e) Musical compositions.

(f) Maps.

(g) Works of art; models or designs for works of art.

(h) Reproductions of a work of

art.

(i) Drawings or plastic works of a scientific or technical character.

(j) Photographs.

(k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.

(l) Motion-picture photoplays.

(m) Motion pictures other than photoplays.

The above specifications shall not be held to limit the subject matter of copyright as defined in section 4 of this title, nor shall any error in classification invalidate or impair the copyright protection secured under this title. (July 30, 1947, c. 391, §1, 61 Stat. 654.)

17 U.S.C. Section 11. Registration of claim and issuance of certificate. Such person may obtain registration of

his claim to copyright by complying with the provisions of this title, including the deposit of copies, and upon such compliance the Register of Copyrights shall issue to him the certificates provided for in section 209 of this title. (July 30, 1947, c. 391, §1, 61 Stat. 656.)

17 U.S.C. Section 101. Infringement. If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) Injunction. - To an injunction restraining such infringement;

(b) Damages and profits - Amount - Other remedies.

To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement,

as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only, and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph, such damages shall not exceed the sum of $200 nor be less than the sum of $50 and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have

been reasonably foreseen, such damages shall not exceed the sum of $100; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of $5,000 nor be less than $250, and such damages shall in no other case exceed the sum of $5,000 nor be less than the sum of $250, and shall not be regarded as a penalty. But the foregoing

exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

First. In the case of a painting, statue, or sculpture, $10 for very infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in section 5 of this title, except a painting statue, or sculpture, $1 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, $50 for very

infringing delivery;

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, $100 for the first and $50 for very subsequent infringing performance; in the case of other musical compositions $10 for every infringing performance;

(c) Impounding during action. To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

(d) Destruction of infringing copies and plates. To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order.

(e) Royalties for use of mechanical reproduction of musical works. Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section 1, subsection (e), of this title: Provided also, That

whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section 1, subsection (e), of this title, by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

(July 30, 1947, c. 391, §1, 61 Stat. 661; June 25, 1948, c. 646, §39, 62 Stat. 992).

17 U.S.C. Section 116. Costs - Attorney's Fees.

In all actions, suits, or proceedings under this title, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs. (July 30, 1947, c. 391, §1, 61 Stat. 665.)

17 U.S.C. Section 209. Certificate of registration - Effect as evidence - Receipt for copies deposited.

In the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of

registration under seal of the copyright office, to contain the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been reproduced in copies for sale, or publicly distributed, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book, the certificate shall also state the receipt of the affidavit, as

provided by section 17 of this title, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after July 1, 1909, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request,

without additional fee, a receipt for the copies of the work deposited to complete the registration. (July 30, 1947, c. 391, §1, 61 Stat. 666.)

17 U.S.C. Section 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title (17 U.S.C. §§101 et seq.), in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including

any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works; and

(7) sound recordings.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. (Added Oct. 19, 1976, P.L. 94-553, Title I, §101, 90 Stat. 2544.)

17 U.S.C. Section 106. Exclusive rights in copyrighted works.

Subject to sections 107 through 118

(117 U.S.C. §§107-118), the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works; pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the

individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly. (Oct. 19, 1976, P.L. 94-553, Title I, §101, 90 Stat. 2546.)

17 U.S.C. Section 107. Limitations on exclusive rights: Fair use. Notwithstanding the provisions of Section 106 (17 U.S.C. §106), the fair use of a copyrighted work, including such use by reproduction in copies or phono-records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall

include -

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

(Added Oct. 19, 1976, P.L. 94-553, Title I, §101, 90 Stat. 2546.)

17 U.S.C. Section 410. Registration of claim and issuance of certificate.

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of

this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of compentent jurisdiction to be acceptable for registration, have all been received in the Copyright Office. (Oct. 19, 1976, P.L. 94-553, Title I, §101, 90 Stat. 2582.)

17 U.S.C. Section 505. Remedies for

infringement: Costs and attorney's fees.

In any civil action under this title (17 U.S.C. §§101 et seq.), the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs. (Oct. 19, 1976, P.L. 94-553, Title I, §101, 90 Stat. 2586.)

Arrangement between the United States and other Powers relative to the repression of the circulation of obscene publications. Signed at Paris, May 4, 1910; ratification advised by the Senate, January 13, 1911; ratified by the President, February 4, 1911; ratification of the United States deposited with the Government of the French Republic March 13, 1911; proclaimed, April 18, 1911.

May 4, 1910.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Repression of obscene publications. Treaties.

Whereas an Arrangement between the United States of America and Germany, Austria-Hungary, Belgium, Brazil, Denmark, Spain, France, Great Britain, Italy, The Netherlands, Portugal, Russia, and Switzerland relative to the suppression of the circulation of obscene publications, was concluded and signed by their respective Plenipotentiaries at Paris, on the fourth day of May, one thousand nine hundred and ten, the original of which Arrangement, being in the French language, is word for word as follows:

[Translation.]

ARRANGEMENT RELATIVE TO THE REPRESSION OF THE CIRCULATION OF OBSCENE PUBLICATIONS.

The Governments of the Powers hereinbelow named, equally desirous of facilitating within the scope of their respective legislation, the mutual interchange of information with a view to tracing and repressing offences connected with obscene publications, have resolved to conclude an arrangement to that end and have, in consequence, designated their plenipotentiaries who met in conference at Paris from April 18 to May 4, 1910, and agreed on the following provisions:

ARTICLE 1.

Each one of the Contracting Powers undertakes to establish or designate an authority charged with the duty of

(1) Centralizing all information which may facilitate the tracing and repressing of acts constituting infringements of their municipal law as to obscene writings, drawings, pictures or articles, and the constitutive elements of which bear an international character.

(2) Supplying all information tending to check the importation of publications or articles referred to in the foregoing paragraph and also to insure or expedite their seizure all within the scope of municipal legislation.

(3) Communicating the laws that have already been or may subsequently be enacted in their respective States in regard to the object of the present Arrangement.

The Contracting Governments shall mutually make known to one another, through the Government of the French Republic, the authority established or designated in accordance with the present Article.

ARTICLE II.

The authority designated in Article I shall be empowered to correspond directly with the like service established in each one of the other Contracting States.

ARTICLE III.

The authority designated in Article I shall be bound, if there be nothing to the contrary in the municipal law of its country, to communicate bulletins of the sentences passed in the said country to the similar authorities of all the other Contracting States in cases of offences coming under Article I.

ARTICLE IV.

Non-Signatory States will be permitted to adhere to the present Arrangement. They shall notify their intention to that effect by means of an instrument which shall be deposited in the archives of the Government of the French Republic. The said Government shall send through diplomatic channel a certified copy of the said instrument to each one of the Contracting States and shall at the same time apprize them of the date of deposit.

Six months after that date the Arrangement will go into effect throughout the territory of the adhering State which will thereby become a Contracting State.

ARTICLE V.

The present Arrangement shall take effect six months after the date of deposit of the ratifications.

In the event of one of the Contracting States denouncing it, the denunciation would only have effect in regard to that State.

The denunciation shall be notified by an instrument which shall be deposited in the archives of the Government of the French Republic. The said Government shall send through the diplomatic channel a certified copy thereof to each one of the Contracting States and at the same time apprize them of the date of deposit.

Twelve months after that date the Arrangement shall cease to be in force throughout the territory of the denouncing State.

ARTICLE VI.

The present Arrangement shall be ratified and the ratifications shall be deposited at Paris as soon as six of the Contracting States shall be in position to do so.

A procés verbal of every deposit of ratifications shall be drawn up and a certified copy thereof shall be delivered through the diplomatic channel to each one of the Contracting States.

ARTICLE VII.

Should a Contracting State wish to enforce the present Arrangement in one or more of its colonies, possessions or consular court districts, it shall notify its intention to that effect by an instrument which shall be deposited in the archives of the Government of the French Republic. The said Government shall send through the diplomatic channel a certified copy to each one of the Contracting States and at the same time apprize it of the date of the deposit.

Six months after that date the Arrangement shall go into effect in the colonies, possessions or consular court districts specified in the instrument of notification.

The denunciation of the Arrangement by one of the Contracting States in behalf of one or more of its colonies, possessions or consular court districts will be effected in the form and under the conditions set forth in the first paragraph of this Article. It will become operative twelve months after the date of the deposit of the instrument of denunciation in the archives of the Government of the French Republic.

ARTICLE VIII.

The present Arrangement which will bear date of May 4, 1910, may be signed at Paris until the following 31st of July by the Plenipotentiaries of the Powers represented at the Conference relative to the repression of the circulation of obscene publications.

Done at Paris, the fourth day of May one thousand nine hundred and ten in a single copy of which a certified copy shall be delivered to each one of the signatory Powers.

And whereas, the said Arrangement has been duly ratified by the Governments of the United States, Germany, Belgium, Spain, France, Great Britain, Italy, and Switzerland, and the ratifications of the said Governments were, as provided for by Article 6 of the said Arrangement, deposited by their respective Plenipotentiaries with the Government of the French Republic on March 15, 1911;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Arrangement to be made public, to the end that the same and every Article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.

Done at the City of Washington this thirteenth day of April in the year of our Lord one thousand nine hundred and eleven [SEAL] and of the Independence of the United States of America the one hundred and thirty-fifth.

WM H TAFT

By the President:

P C KNOX

Secretary of State.

Opposition

FILED
JUN 11 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2094

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,
Petitioners,

vs.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC. and MOOKS, INC., all California Corporations,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a party which has successfully defended a copyright suit on the defense of fair use, may petition this Court to review an asserted defense that obscenity may not be copyrighted, where there will be no change in the result of the lawsuit should the second defense be upheld?

Whether a judicial determination that a motion picture is obscene, based on local, contemporary standards, is a defense to infringement of copyright?

LIST OF PARTIES

The petitioners are James J. Clancy, a private attorney who has specialized in bringing civil actions to stop exhibition of motion pictures, and Gordon Bricken, James E. Ward, David L. Brandt and David F. Ortiz, who, at all times relevant to this lawsuit, were members of the City Council of the City of Santa Ana, Orange County, State of California.

Respondents are Jartech, Inc., registered copyright holder of the motion picture, "Behind the Green Door"; Anatuna, Inc., registered copyright holder of the motion picture, "Resurrection of Eve"; Cinema 7, Inc., copyright holder of the motion pictures, "Sodom and Gomorrah", "The Autobiography of a Flea" and "Inside Marilyn Chambers"; and Mooks, Inc., copyright holder of the motion picture, "C.B. Mamas". All these respondents are California corporations, and all are controlled by James L. Mitchell and Artie J. Mitchell of San Francisco, California.

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No. 81-2094

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,
Petitioners,

VS.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC. and MOOKS, INC., all California Corporations,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

THE OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit, filed January 25, 1982, is reported at 666 F.2d 403, and a copy is attached to the petition as Appendix A-1.

JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed on January 25, 1982. On April 12, 1982, Justice Rehnquist signed an order extending the time for filing a petition for writ of certiorari to and including May 10, 1982. Petitioners invoke this Court's jurisdiction under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 8. The Congress shall have Power . . .

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Article 3, Section 2, Clause [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

This is a copyright infringement suit in which the plaintiffs (hereafter "The Mitchell Brothers") are a group of corporations which are the authors and copyright holders of five motion pictures. These corporations are controlled by James Mitchell and Artie Mitchell, who are also the general partners in Mitchell Brothers Film Group, the plaintiff and appellant in *Mitchell Brothers Film Group, et al. v. Cinema Adult Theater, et al.* (5th Cir., 1979) 604 F.2d 854, cert. den. 445 U.S. 15. One of the films here,

"Behind the Green Door", was the film in the Fifth Circuit case.

The defendants (petitioners in this Court) are James Clancy, a private attorney specializing in bringing civil actions to halt the showing of "adult" films, and four members of the Santa Ana (California) City Council. Clancy, using a technique he developed involving a modified motion picture camera and a tape recorder, sent an agent into the Mitchell Brothers Santa Ana Theatre to surreptitiously take pictures and record the sound track of films being exhibited. After these pictures were developed, they were made into what Clancy terms "time and motion studies". Examples of these sheets of small black and white photographs with "explanatory" notes and bits of quoted dialogue have been attached to the petition as Appendix D.

Clancy took examples of these "time and motion" studies to the Santa Ana City Council and, promising he could draft a suitable statute and do the necessary legal work to get the theatre closed, he offered his services as special counsel to the City. The Council hired him in early 1976 on the vote of the four members who are petitioners here, and Clancy began to copy by this process all the films shown at the theater.

In October, 1976, through a news article, the Mitchell Brothers learned of this copying, and brought suit for copyright infringement of the five films which they had made and copyrighted.

Clancy and the other defendants counterclaimed, seeking declaratory judgment that the five films named in the

suit and another (which was produced by Mooks, Inc., after the lawsuit had begun) were obscene and subject to seizure by the district court as contraband. The defendants also raised two affirmative defenses: that the films, being obscene, were not protectable by copyright, and that the copying of them was a "fair use" under the copyright laws.

The case was tried before a jury in the Central District of California beginning in November, 1978. Before submission of the case to the jury, the trial court bi-furcated the trial, reserving the issues of the counter-claim to itself, to be decided after the jury's verdict.

The jury found that each of the five films was obscene, that each defendant was responsible for the intentional copying of the films without authority, that the defendants realized no profit from this copying, and that the copying was a fair use. Judgment was entered in December, 1978, and a notice of appeal filed.

The Court of Appeal for the Ninth Circuit reversed on the issue of obscenity as a defense, and the issue of attorney's fees, but in all other respects upheld the judgment of the district court.

I

PETITIONERS AS PREVAILING PARTIES HAVE NO STANDING TO SEEK REVIEW OF THE JUDGMENT

The petitioners prevailed in both the district court and the court of appeals on the issue of copyright infringement. Admitting that they copied the materials without permission of the copyright holders, Clancy and the Council

members asserted two affirmative defenses: that the materials were obscene, and that their copying was a "fair use," as that term is defined by 17 U.S.C. Section 107.

At trial they prevailed on both issues; on appeal they prevailed on the defense of fair use only. But they prevailed.

28 U.S.C. Section 1254 states generally that "any party" may petition for certiorari of a case before a court of appeal. Thus the prevailing party is not by statute prevented from seeking review, yet there appears to be no instance in which this Court has granted certiorari to a party which prevailed below. *See,* Stern & Gressman, *Supreme Court Practice, Fifth Ed.,* pp. 58-59 (1978). It is doubtful the Court has jurisdiction to grant such a petition because of the "case-or-controversy" provision of Article 3, Section 2, Clause 1, of the Constitution.

Undeniably, at earlier stages of this litigation there was a case between the parties on this issue. But since Clancy and the Council members prevailed in both those forums and the Mitchell Brothers have not chosen to seek reversal here, that case no longer exists. "The usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated." *Roe v. Wade* (1972) 410 U.S. 113, 125, *rehearing den.* 410 U.S. 959, citing *United States v. Mensingwear, Inc.* (1950) 340 U.S. 36; *Golden v. Zwickler* (1969) 394 U.S. 103; and, *SEC v. Medical Committee for Human Rights* (1972) 404 U.S. 403 (1972).

If the question presented here is reviewed, no change in the outcome will result. No matter if this Court reverses

the decision below or upholds it, Clancy and the Council members will prevail on the issue of copyright infringement. The decision would be an advisory opinion of use in future litigation only, and such opinions are not rendered by this or any federal court. *United Public Workers of America v. Mitchell* (1947) 330 U.S. 75, 89.

The petitioners cannot claim any direct injury, or threat of such injury, nor do they try to do so. Rather, they claim that.

> "The immediate danger is that this Court's refusal to review this issue will send a signal to the membership in the pornographic trade to go ahead and register every pornographic movie. Petitioners submit that the catastrophic consequences of that development on the local, national and international scene is self-evident." Petition at page 63.

Few things are self-evident, and petitioners' forecast of world-wide catastrophe is most certainly not. Speculative injury is not enough to establish the case-or-controversy requirement of the Constitution. *O'Shea v. Littleton* (1974) 414 U.S. 488, 497-498.

II

THERE IS NO CONFLICT BETWEEN THE CIRCUITS ON THE QUESTION OF LAW PRESENTED

The petitioners don't state precisely what portion of the relevant Rules of this Court support their request for the writ of certiorari. It appears, however, that they must be relying either on a conflict between the circuits (Rule 17.1

(a)) or an important question of law not yet decided by this Court, and requiring such a decision (Rule 17.1(c)).

The decision of the Ninth Circuit in this case is fully in accord with the only other modern decision rendered by any court of appeal, that is, *Mitchell Brothers Film Group v. Cinema Adult Theater, supra,* 604 F.2d 852, *cert. den.* 445 U.S. 917. In *Mitchell Brothers,* Judge Godbold said:

> "Some courts have denied legal redress in infringment suits to holders of copyrights on immoral or obscene works by applying judicially-created doctrines. Two of these doctrines [that judges are conservators of public morality, and that one cannot have property in obscene works] are largely vestiges of a bygone era. . . ."

Petitioners vehemently dispute this, but in so doing they prove the point. At page 32 of their petition, they claim that *Sir Charles Sedley's Case* [sic] 1 Sid 168, states that "the Courts are the guardians of the public morals." Actually, the correct quotation is: ". . . *que cest Court est custos morum de touts les subjects le Roy* . . . ." 1 Sid. 168, LE ROY *versus* SR. CHARLES SIDLEY. The case is so ancient that it is written in the peculiar legal patois of mixed Latin and medieval French current in British legal opinions in the fifteenth year after the fall of Cromwell.

The more modern authorities relied on by the petitioners are *Dominus Rex v. Curl;* 2 Strange 789, written in "1 Geo. 2" (1727), and *Phelan v. Commonwealth of Virginia* (1850) 8 How. 161. *Curl* actually deals with an immoral book (*Venus in the Cloister*) and much of the opinion is in Eng-

lish, but the decision is split. *Phelan*, as all attorneys remember from their Con Law classes, concerns a lottery for raising money to repair roads. Further, *Phelan* does not state that the *courts* are the controllers of public morals, but that the government is, in upholding the power of the legislature of Virginia to make gambling illegal.

If petitioners' latest authority is an ante-bellum case which is also inapposite, they can't seriously claim that there is a conflict in the circuits.

III

THERE IS NO ISSUE OF LAW REQUIRING THIS COURT'S INTERVENTION

Petitioners seem to have two major issues: that the constitution forbids copyright of obscene works; and that copyright protection will somehow insulate an obscene work from the reach of obscenity laws.

A. There is no constitutional requirement that only censored works be copyrighted

Petitioners argue that Article 1, Section 8, Clause 8, limits copyright protection to writings that promote science or the useful arts, citing *Graham v. John Deere* (1966) 383 U.S. 1, 6, which says:

> "within the limits of the constitutional grant, the Congress may, of course, implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim."

But this clause does not require the censorship that petitioners urge. Professor Nimmer states that this intro-

ductory phrase, "to promote the progress of science and useful arts . . .", is:

> "In the main explanatory of the purpose of copyright, without in itself constituting a rigid standard against which any copyright act must be measured. Its effect at most is to suggest certain minimal elements to be confined in copyright legislation." 1 Nimmer on Copyright, Section 1.03, p. 1-28 (1980).

Another commentator has explained:

> "The words of the copyright clause of the constitution do not require that *writings* shall promote science or useful arts: they require that *Congress* shall promote those ends." Phillips, Copyright on Obscene Works: Some British and American Problems, 6 Anglo-Am. L.Rev. 138, 166 (1977).

See, also, Bleistein v. Donaldson Lithographing Co. (1903) 188 U.S. 239.

B. Grant of copyright protection will not insulate authors of obscene works from laws controlling obscenity

Petitioners express the fear that copyright protection for obscene works somehow *will* insulate such works from the reach of obscenity laws and treaties. They make no effort to explain just why that has not yet happened in view of the decision of the Fifth Circuit Court of Appeals in 1979. They also make no effort to explain just *how* it will happen when it does, for no authority is cited for the proposition that copyright protection also extends protection from criminal or civil actions concerning obscenity. At best the argument seems to be that the courts fail in their duty

to agree with petitioners about the evils of obscenity when they decline to censor applications for copyright protection.

Because obscenity is defined by reference to local, contemporary community standards, *Miller v. California* (1972) 413 U.S. 15, it is a most inappropriate standard for limiting copyright protection. Not only would important works now regarded as classics go without protection (see the list of works formerly considered obscene in *Mitchell Brothers, supra,* 604 F.2d at 857) but pirates would be encouraged to exhibit or sell their stolen goods only in those communities where the works are offensive to community standards, and thus safe from actions by the authors. There is no logical reason for reversing the decision below.

CONCLUSION

For the foregoing reasons it is respectfully requested that the petition for certiorari be denied.

ROBERT L. THORP
Attorney for Respondents

Petitioner's Reply Brief

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No. 81- 2094

In the Supreme Court of the United States

October Term, 1981

JAMES J. CLANCY, GORDON BRICKEN, JAMES E. WARD, DAVID L. BRANDT, and DAVID F. ORTIZ,

Petitioners,

v.

JARTECH, INC., ANATUNA, INC., CINEMA 7, INC., and MOOKS, INC., all California corporations,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY AND SUPPLEMENTAL BRIEF

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY AND SUPPLEMENTAL BRIEF

Pursuant to Rules 22.5 and 22.6 of the U.S. Supreme Court Rules, Petitioners file the following Reply and Supplemental Brief to the Respondents' "Opposition to Petition for a Writ of Certiorari" in No. 81-2094. The Supplemental Brief addresses itself to the recent action of this Court in Sony Corp. of America, et al. v. Universal City Studios, Inc., 659 F.2d 963

(9th Cir., 1981), petitions for writs of certiorari granted on June 14, 1982 in Sony Corp. of America, et al. v. Universal City Studios, Inc., No. 81-1687.

ARGUMENT

I

RESPONDENTS' "LIST OF PARTIES" AND "STATEMENT OF THE CASE" MISSTATES THE TRIAL FACTS.

In their "Opposition to Petition for a Writ of Certiorari" in each of case nos. 81-2094, 81-2095 and 81-2096, Respondent Corporations Jartech, Inc., Anatuna Inc., Cinema 7, Inc. and Mooks, Inc., have incorrectly stated that the only interest of the Respondent "Mooks, Inc." is as "copyright holder of the motion picture 'C.B. Mamas'". Respondent "Mooks, Inc." and not Respondent "Cinema 7, Inc." is the copyright holder of the motion picture "The Autobiography of a Flea". This error is a harmless misstatement of the record except as to the Petition in No. 81-2096.

Petitioner has responded to that misstatement in a Reply Brief in No. 81-2096, which is concurrently being filed with the Reply and Supplemental Brief herein in 81-2094.

At page 3 of their "Opposition to a Petition for Writ of Certiorari", Respondents have erroneously described the nature of the Defendants' counterclaim as:

> "Clancy and the other defendants counterclaimed, seeking declaratory judgment that the five films named in the suit and another (which was produced by Mooks, Inc., after the lawsuit had begun) were obscene and subject to seizure by the district court as countraband."

A correct description of the nature of the counterclaim is set forth in the Petition for a Writ of Certiorari in No. 81-2096 at pages 14-16 and reads as follows:

> " Pursuant to order of Court, the defendants on June 5, 1978, were permitted to file a verified amended counterclaim, see copy at Appendix C-1 thru C-48 to this Petition (C.R. 66; C.T. 512-537), which differed from the copyright infringement complaint in that it: (1) named a

> sixth film "C.B. Mamas", as additional subject matter in the Santa Ana controversy, with an allegation that Mooks, Inc., also claimed a copyright interest in that film; (2) added James Mitchell, Artie Mitchell and Mitchell Brothers Film Group, a general partnership (James and Artie each owning a 50% interest) as defendants, with allegations as to the interest of each in the six films, and an allegation that they were principal and alter ego of the other defendants; and (3) sought additional relief, including a judgment against James Mitchell, Artie Mitchell and Mitchell Brothers Film Group, the general partnership, and a declaratory judgment that the 6 "Certificates of Registration of a Claim to Copyright" were invalid, that each of the films was obscene and unlawful property and contraband under the law of the United States, that the plaintiffs were not entitled to an injunction, and that all of the positive and negative prints of such films should be deposited in Court and forfeited as contraband. The counterclaim also alleged in paragraph 34 that a present and continuing actual controversy existed between the parties regarding the status of the six copyrights and the rights, duties and obligations of each of the parties to the controversy."

Further, the above statement that the sixth film named in the counterclaim "was produced by Mooks, Inc. after the lawsuit

had begun" is in error. The copyright claim in "C.B. Mamas" was one year old when Plaintiffs' First Amended Complaint was filed. This same error appears in Respondents' Opposition to Petition for a Writ of Certiorari in 81-2096. A more comprehensive reply on the materiality of that error as it pertains to the counterclaim appears at pages 6 and 7 in the Reply Brief in Case No. 81-2096 (Judgment re Counterclaim in Favor of Counter-Defendants, entered Nov. 23, 1979 - C.A. 80-5016).

Respondents "Statement of the Case" in their Opposition to Petition for a Writ of Certiorari at page 3 that:

> " Clancy took examples of these "time and motion" studies to the Santa Ana City Council and, promising he could draft a suitable statute and do the necessary legal work to get the theater closed, he offered his services as special counsel to the City. The Council hired him in early 1976 on the vote of the four members who are petitioners here, and Clancy began to copy by this process all the

films shown at the theater."

is improper, being an erroneous statement of the trial facts. The record is clear that such attorney had been employed by the full City Council and still is, and that the actions which were taken were the actions of the full seven man City Council. A similar misleading statement of facts is presented in the Respondents' Opposition to a Petition for Writ of Certiorari in Case No. 81-2096 and is addressed more fully in the Petitioners' Reply Brief in No. 81-2096 at Point III on page 11 et seq.

II

THE PETITION FOR WRIT OF CERTIORARI HEREIN IS AUTHORIZED BY 28 U.S.C. SECTION 1254(1).

Respondents contend that, because the Defendants are the "prevailing party", they may not petition for a writ of certiorari under 28 section 1254(1) because "It is doubtful the Court has

jurisdiction to grant such a petition because of the 'case-or-controversy' provision of Article 3, section 2, clause 1 of the Constitution". (Opposition to Petition for a Writ of Certiorari, page 5.) In support of that contention they argue:

> " If the question presented here is reviewed, no change in the outcome will result. No matter if this Court reverses the decision below or upholds it, Clancy and the Council members will prevail on the issue of copyright infringement. The decision would be an advisory opinion of use in future litigation only, and such opinions are not rendered by this or any federal court. United Public Workers of America v. Mitchell (1947) 330 U.S. 75, 89.
>
> The petitioners cannot claim any direct injury, or threat of such injury, nor do they try to do so."

That argument is clearly faulty. A reversal of the judgment of the Court of Appeals based on either Question 1A or Question 1B; that is, on the grounds that obscenity is a defense to a copyright infringement lawsuit or that the validity of the Certificates of Registration of a

Claim to Copyright issued by the Copyright Office is subject to attack in the U.S. District Court on the grounds that the film is obscene, would automatically entitle the Petitioners to a judgment on their Petition for a Writ of Certiorari in Case No. 81-2095 and reinstatement of the Attorney's Fee, which was awarded by the trial court to the Defendants and annulled by the judgment of the Court of Appeals as a result of its holding that "obscenity" was not a defense in a copyright infringement action. See Point I of "Reasons for Granting the Writ" at page 36 of the Petition for a Writ of Certiorari in 81-2095 entitled "The Court of Appeals Erred In Its Conclusion of Law That Obscenity Is Not A Defense To A Copyright Infringement Lawsuit. A Reversal of That Judgment Will Require That The Judgment Awarding An Attorney's Fee Be Reinstated."

28 U.S.C. section 1254(1) authorizes

the petition for writ of certiorari herein, notwithstanding the fact that the Petitioners are regarded as the "prevailing party" in the Court of Appeals below. That section permits "any party" to a case in the Court of Appeals to apply for a writ of certiorari. See Stern and Gressman, Supreme Court Practice, Fifth Edition, pp. 58-59 (1978).

Further, it should be noted that the Petitioners were not the "prevailing party" in the Court of Appeals on the issue of a right to an attorney's fee under 17 U.S.C. section 116. The Court of Appeals annulment of the attorney's fee award to the Defendants was predicated upon a rule of law which Petitioners claim is erroneous and as to which Petitioners are seeking review in this Petition.

III

THE PETITION DOES NOT CLAIM THAT THERE IS A CONFLICT BETWEEN THE CIRCUITS. POINT II OF RESPONDENTS' OPPOSITION BRIEF WHICH ADDRESSES THAT PROPOSITION IS SURPLUSAGE AND REQUIRES NO REPLY.

Respondents have misread the Petition. Point II of their Opposition Brief which addresses the issue of "Conflict Between the Circuits" is surplusage.

The petition clearly states that this Court's jurisdiction is invoked under Rule 17.1(a) and 17.1(c) of the U.S. Supreme Court. See Petition for a Writ of Certiorari at page 3. Page xiv of the Index shows that Rule 17.1(a) is referred to in the Petition at pages 3, 20, 60 and 61. Reference to the subject matter on those pages shows that Petitioners do not claim that the Federal Court of Appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter, but rather

that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. (See Petition at pages 60-61).

IV

THE COPYRIGHT INFRINGEMENT LAWSUIT THAT IS BEFORE THIS COURT IS ONE CLEAR EXAMPLE OF HOW THE GRANTING OF COPYRIGHT PROTECTION TO OBSCENE MATTER WILL WORK HAVOC ON LAW ENFORCEMENT'S EFFORTS TO CONTROL OBSCENITY.

Respondents' "Opposition to Petition for a Writ of Certiorari" at page 9 professes an ignorance as to how the granting of a copyright to obscene matter will impede the efforts of law enforcement to suppress such materials:

> "Petitioners express the fear that copyright protection for obscene works somehow will insulate such works from the reach of obscenity laws and treaties. They make no effort to explain just why that has not yet happened in view of the decision of the Fifth Circuit Court of Appeals in 1979. They also make

> no effort to explain just how it will happen when it does . . ."

Respondents appear to be responding to the Petitioners' statement of the problem in the Petition for a Writ of Certiorari at page 7, reading:

> " The importance of this case is manifest. If the opinion of the Ninth Circuit is permitted to stand, the pornographers will proceed to register every hard-core film that they produce. The federal property rights thereby created will have a catastrophic effect on obscenity law enforcement locally, nationally, and internationally, and will provide the pornographers with a new weapon in the form of a civil rights lawsuit attacking any obscenity law enforcement which affects their "copyright interests".

Respondents have ignored the fact that Petitioners addressed themselves to this problem in their Petition at page 41-42:

> " The Court of Appeals' decision has created a dilemma. If the copyright claimants, Jartech, Inc.; Anatuna, Inc.; Cinema 7, Inc.; and Mooks, Inc.; have a copyright interest (property interest) in the five named films in the State of California, under a Ninth Circuit ruling, then all of those property interests which are set forth in the

> copyright statutes (see Appendix E-1 to E-7) must be recognized by all of the federal circuits and all of the state jurisdictions in the 49 other states, and the films, therefore, must be held to be not obscene in those jurisdictions, also. Conversely, if the claimants do not have a copyright interest because the films are obscene in the Ninth Circuit under federal copyright standards, they are also obscene in the federal sense and are not the subject of a property interest in each of the other federal circuits and in each of the 50 states."

The grant of copyright protection to obscene materials will give "standing" to the pornographers to resist law enforcement efforts with <u>two</u> types of federal lawsuits alleging an interference with property interests, one based upon copyright protection and copyright infringement and the other based upon the civil rights statute 42 U.S.C. section 1983. Few, if any public agencies have the financial ability to address themselves to such federal actions while, at the same time, carrying out their public duties to enforce the state and

federal obscenity statutes. Perhaps the best illustration of this impediment is the copyright infringement lawsuit which is before this court. See, in this regard, the arguments of Petitioners in Case No. 81-2095, as to the ability of the City to meet the expenses of such lawsuit, where, after obtaining an award of an attorney's fee in the U.S. District Court, the same was annulled by the Court of Appeals; at pages 62-63:

> " In his opinion, Judge Waters noted that: 'It does not seem fair or equitable that the taxpayers of Santa Ana bear the entire burden of the cost of this litigation', (C.R. 119 at page 5), and found as a fact that 'It would be inequitable to place the entire burden of the costs of this litigation on the taxpayers of Santa Ana', see Statement of Facts, supra, at page 28, (C.R. 140 at para 20). The substantial attorney's fees spent by the successful defendants in this case will, if not reimbursed from the losing plaintiffs, have the same effect on these defendants and on other potential individual defendants who are acting on behalf of government as would an award of substantial damages against them.

> Were this Court to place a direct financial burden on individuals in City and County government (who are not copiers for profit and who are making good faith attempts to abate obscene films as public nuisances), these plaintiffs as producers of obscene motion picture films and other such producers would become the recipients of a defense which contravenes public policy in that the same would inflict a chilling effect on the ligitimate use of the state courts for abatement of obscene films."

V

THE QUESTION AS TO WHETHER THE CITY COUNCIL'S USE OF THE MATERIALS IS FAIR USE "AS A MATTER OF LAW" IS THE SAME ISSUE WHICH IS BEFORE THIS COURT UNDER ITS GRANT OF CERTIORARI ON JUNE 14, 1982 IN THE SONY CASE. ARGUMENTS ON THE "FAIR USE" ISSUE HEREIN SHOULD BE HEARD IN TANDEM WITH THE SAME ISSUE IN SONY.

Subsequent to the filing of the Petition for Writ of Certiorari herein, this Court granted writs of certiorari in Sony Corporation of America, et al. v. Universal City Studios, No. 81-1687, 50 L.W. 3982 (June 15, 1982). The "fair use" issue which is presented in Sony is the same issue which is presented in this

Petition.

In Universal City Studios, Inc., et al. v. Sony Corporation of America, et al., 480 F.Supp. 429 (C.D. Cal., 1979), U.S. District Judge Ferguson held that home-use recording was fair use as a matter of law, under both the old act and the new act. See Petition for Writ of Certiorari in 81-1687 at pp. 56-86. Upon appeal, the Court of Appeal reversed in 659 F.2d 963 (9th Cir., 1981), holding that home-use recording as a matter of law was not "fair use". See Petition for Writ of Certiorari in 81-1687 at pp. 12-25. The question herein as to whether the City Council's use of the materials is fair use as a matter of law is the same issue which is before this Court in Sony.

Petitioners respectfully submit that the Petition for Writ of Certiorari herein should be granted and the copyright issues presented in this Petition should be

argued in tandem with the copyright issues in Sony.

DATED: August 9, 1982

Respectfully submitted,

James J. Clancy
Counsel for Petitioners.

CERTIFICATE OF SERVICE

I, hereby certify that on this ____ day of August, 1982, the original and 40 copies of the within Reply and Supplemental Brief were deposited in the United States Post Office in Phoenix, Arizona, with first-class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court.

I further certify that three (3) copies were also mailed, postage prepaid, to the below listed parties to the proceedings and that all parties required to be served have been served.

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